



U.S. OFFICE OF SPECIAL COUNSEL
1730 M Street, N.W., Suite 218
Washington, DC 20036-4505
(202) 804-7000

March 11, 2019

Taylor Amarel
MuckRock News
411 A Highland Avenue Dept MR 55560
Somerville, MA 02144-2156
Via Email: 55560-30420283@requests.muckrock.com

Re: Freedom of Information Act Request (#FO-18-0082)

Dear Taylor Amarel:

Please be advised that this is a final response to your request dated June 1, 2018, in which you asked the U.S. Office of Special Counsel (OSC) to provide you with “[a]ll emails sent to, from, or copied to: Henry Kerner, from January 1, 2016 to [p]resent [], containing any of the following non-case sensitive key-string ‘liberals’, ‘kushner’, ‘Giuliani’, ‘Mastroianni’, ‘Elliott Broidy’, ‘Mark Siffin’, ‘EB-5’, ‘George Nader’, ‘Erik Prince’, ‘alias’, ‘FOIA’, ‘Israel’ or ‘whistleblower’.” Your request has been processed under the Freedom of Information Act (FOIA), 5 U.S.C. § 552 and the Privacy Act, 5 U.S.C. § 552a.

OSC identified 180 pages of responsive records. We are releasing 56 pages to you in full, 36 pages released in part, and 88 pages withheld in full pursuant to FOIA Exemptions (b)(5), (b)(6), and (b)(7)(C).

- FOIA Exemption 5 protects from disclosure inter-agency or intra-agency information that is normally protected from discovery in civil litigation based on one or more legal privileges (including, in this instance, the deliberative process and attorney work product privileges). See 5 U.S.C. § 552(b)(5).
- FOIA Exemption 6 protects information if disclosure would constitute a clearly unwarranted invasion of personal privacy. See 5 U.S.C. § 552(b)(6).
- FOIA Exemption 7(C) protects law enforcement information if disclosure could reasonably be expected to constitute an unwarranted invasion of personal privacy. See 5 U.S.C. § 552(b)(7)(C).

You have the right to appeal this determination under the FOIA. An appeal must be made in writing and sent to OSC’s General Counsel at the address shown at the top of this letter or by email to FOIAappeal@osc.gov. The appeal must be received by the Office of General Counsel within ninety (90) days of the date of this letter.

If you have any questions or you require dispute resolution services, please feel free to contact Mahala Dar, OSC’s Chief FOIA Officer and acting FOIA Public Liaison, at mdar@osc.gov or (202) 804-7060. Please reference the above tracking number when you call or write. Additionally, you

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may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer.¹

Thank you,

/s/

Mahala Dar, Esq.
Clerk

¹ Office of Governmental Information Services (OGIS), National Archives and Records Administration 8601 Adelphi Road, Room 2510, College Park, MD 20740-6001; ogis@nara.gov (Email) 202-741-5770 (Office) 1-877-684-6448 (Toll Free) 202-741-5769 (Fax)

From: [Lopez, Louis](#)
To: [Leavitt, Tristan](#); [Gerber, Jill](#); [IOSC](#); [Marrone, Ana](#)
Subject: RE: President Trump Announces 2020 Campaign Manager
Date: Tuesday, February 27, 2018 2:43:23 PM

Thanks. [REDACTED] DP [REDACTED] today and [REDACTED] (b)(5); DP [REDACTED]
on next steps.

From: Leavitt, Tristan
Sent: Tuesday, February 27, 2018 2:41 PM
To: Gerber, Jill [REDACTED] IOSC [REDACTED] Marrone, Ana [REDACTED]
Lopez, Louis [REDACTED]
Subject: RE: President Trump Announces 2020 Campaign Manager

Adding Louis.

From: Gerber, Jill
Sent: Tuesday, February 27, 2018 12:38 PM
To: IOSC [REDACTED] Marrone, Ana [REDACTED]
Subject: FW: President Trump Announces 2020 Campaign Manager
Importance: High

AP at the White House just asked whether the Hatch Act allows the use of an official White House title, such as [REDACTED] (b)(6); (b)(7)(C) [REDACTED] in a campaign press release. The reporter is filing shortly if we can/want to offer any general guidance on what's allowed.

From: [REDACTED] [REDACTED] [REDACTED] (b)(6); (b)(7)(C) [REDACTED]
Sent: Tuesday, February 27, 2018 12:35 PM
To: Gerber, Jill [REDACTED] (b)(6); (b)(7)(C) [REDACTED]
Subject: Fwd: President Trump Announces 2020 Campaign Manager

Here's the release

--

[REDACTED] [REDACTED]
[REDACTED] (b)(6); (b)(7)(C) [REDACTED]
[REDACTED] (b)(6) [REDACTED] (b)(6); (b)(7)(C) [REDACTED]

----- Forwarded message -----

From: Donald J. Trump for President, Inc. <pressoffice@donaldtrump.com>
Date: Tue, Feb 27, 2018 at 11:10 AM
Subject: President Trump Announces 2020 Campaign Manager
To: [REDACTED] [REDACTED] [REDACTED] (b)(6); (b)(7)(C) [REDACTED]

No Images? [Click here](#)



- FEBRUARY 27 2018 -

President Trump Announces 2020 Campaign Manager

Brad Parscale an "amazing talent," selected based on record of success

NEW YORK, NY – Today, President Trump announced the appointment of Brad Parscale as the Campaign Manager for his reelection committee as the advanced planning for the 2020 race begins.

Mr. Parscale is a longtime digital marketing strategist for President Trump, first with the Trump Organization and then with the successful 2016 presidential campaign, who has continued to lead digital strategies for the campaign and the Republican National Committee.

In addition to focusing on building its infrastructure for the 2020 race, the Trump Campaign will be engaged in the 2018 midterm elections this year, providing candidates with general support, endorsements, and rallying the support of the political grassroots by engaging Trump supporters in districts and states.

Eric Trump said, "Brad is an amazing talent and was pivotal to our success in 2016. He has our family's complete trust and is the perfect person to be at the helm of the campaign."

Jared Kushner, Senior Advisor and Assistant to the President, and President Trump's son-in-law, said, "Brad was essential in bringing a disciplined technology and data-driven approach to how the 2016 campaign was run. His leadership and expertise will be help build a best-in-class campaign."

Also, Republican National Committee Chairman Ronna McDaniel said, "President Trump is delivering on his promises for a stronger more prosperous country. More jobs, more take home pay, historic judicial appointments, and less burdensome regulations on our economy are already lifting all Americans and is exactly why we need to keep fighting to make America great. We're committed to continuing this fight for our country by President Trump's side and I'm thrilled Brad will help lead the effort."

###



Paid for by Donald J. Trump for President, Inc.

725 5th Avenue · New York, NY · 10022

info@donaldtrump.com

Preferences | Unsubscribe

From: Kerner, Henry
To: Hamrick, Erica; Gerber, Jill
Subject: RE: President Trump Announces 2020 Campaign Manager
Date: Tuesday, February 27, 2018 1:09:00 PM

(b)(5)

From: Hamrick, Erica
Sent: Tuesday, February 27, 2018 1:08 PM
To: Gerber, Jill (b)(6):(b)(7)(C) Kerner, Henry (b)(6):(b)(7)(C)
Subject: RE: President Trump Announces 2020 Campaign Manager

(b)(5); (b)(7)(C)

From: Gerber, Jill
Sent: Tuesday, February 27, 2018 1:04 PM
To: Kerner, Henry (b)(6):(b)(7)(C) Hamrick, Erica (b)(6):(b)(7)(C)
Subject: RE: President Trump Announces 2020 Campaign Manager

(b)(5)

From: Kerner, Henry
Sent: Tuesday, February 27, 2018 12:53 PM
To: Gerber, Jill (b)(6):(b)(7)(C) Hamrick, Erica (b)(6):(b)(7)(C)
Subject: FW: President Trump Announces 2020 Campaign Manager

(b)(5)

From: Hamrick, Erica
Sent: Tuesday, February 27, 2018 12:52 PM
To: Kerner, Henry (b)(6):(b)(7)(C)
Subject: RE: President Trump Announces 2020 Campaign Manager

(b)(5); (b)(7)(C)

(b)(5)

From: Kerner, Henry

Sent: Tuesday, February 27, 2018 12:42 PM

To: Hamrick, Erica (b)(6);(b)(7)(C)

Subject: FW: President Trump Announces 2020 Campaign Manager

Importance: High

(b)(5)

From: Gerber, Jill

Sent: Tuesday, February 27, 2018 12:38 PM

To: IOSC (b)(6);(b)(7)(C) Marrone, Ana (b)(6);(b)(7)(C)

Subject: FW: President Trump Announces 2020 Campaign Manager

Importance: High

AP at the White House ~~just asked whether~~ the Hatch Act allows the use of an official White House title, such as (b)(6); (b)(7)(C) in a campaign press release. The reporter is filing shortly if we can/want to offer any general guidance on what's allowed.

From: (b)(6); (b)(6); (b)(6);(b)(7)(C)

Sent: Tuesday, February 27, 2018 12:35 PM

To: Gerber, Jill (b)(6);(b)(7)(C)

Subject: Fwd: President Trump Announces 2020 Campaign Manager

Here's the release

--

(b)(6); (b)(6);

(b)(6);(b)(7)(C)

(b)(6); (b)(6);(b)(7)(C)

----- Forwarded message -----

From: Donald J. Trump for President, Inc. <pressoffice@donaldtrump.com>

Date: Tue, Feb 27, 2018 at 11:10 AM

Subject: President Trump Announces 2020 Campaign Manager

To: (b)(6); (b)(6); (b)(6);(b)(7)(C)

No Images? [Click here](#)



- FEBRUARY 27 2018 -

From: [Lopez, Louis](#)
To: [Kerner, Henry](#); [Leavitt, Tristan](#); [Millsaps, Travis](#)
Cc: [Marrone, Ana](#); [Hamrick, Erica](#); [Lopez, Louis](#)
Subject: (b)(5)
Date: Monday, July 9, 2018 4:38:21 PM
Attachments: (b)(5)

Henry-

Attached is the (b)(5) We will use it to discuss cases at tomorrow's meeting.

Thanks!

-Louis

From: Gerber, Jill
To: Everybody
Subject: Daily Clips
Date: Tuesday, February 27, 2018 10:00:20 AM

Office of Special Counsel

A senior career official in the US Department of Housing and Urban Development has alleged that she was demoted and replaced with a Donald Trump appointee after refusing to break the law by funding an expensive redecoration of Ben Carson's office.

Helen Foster said she was told "\$5,000 will not even buy a decent chair" after informing her bosses this was the legal price limit for improvements to the HUD secretary's suite at the department's Washington headquarters.

Foster, 47, claimed that she also faced retaliation for exposing a \$10m budget shortfall, and for protesting when she was barred from handling a pair of sensitive freedom of information act (FOIA) requests relating to Trump apparently because she was perceived to be a Democrat.

A copy of a complaint letter filed by Foster to a watchdog for federal employees was obtained by the Guardian. It alleges that HUD violated laws protecting whistleblowers from reprisals. Foster is seeking a public apology, compensatory damages and reinstatement as HUD's chief administrative officer.

Trump last September nominated Suzanne Israel Tufts, a veteran Republican operative from his home county of Queens, New York, as HUD's assistant secretary for administration, a position that Foster said subsumed her job. Foster was moved to the role of chief privacy and FOIA officer. Tufts was confirmed by the US Senate.

"This is a long-time public servant who did well at her job, and now her reputation has been ruined," said Foster's attorney, Joseph Kaplan, who filed the complaint to the office of special counsel (OSC) last November.

The OSC investigates allegations from civil servants of improper treatment and can prosecute or seek to settle complaints. It is not related to the justice department's special counsel, Robert Mueller.

<https://www.theguardian.com/us-news/2018/feb/27/hud-ben-carson-office-redecoration-trump-appointee>

General News

Serving the underserved was the theme to Dr. Sarah Kemble's career, whether it be working with activists in Central America in the 1980s or helping found a community health center in Turners Falls.

With that spirit, she took a job in 2014 as chief of medicine for the U.S. Department of Veterans Affairs for the central and western Massachusetts region. She believed that access to good health care was a right, not a privilege.

But her optimism soon turned to frustration and anger over what she believed were dangerous practices in the regional VA system not being addressed.

Kemble fought to make things better, but she died of cancer in December. Five days before she died, she completed a 23-page affidavit blowing the whistle on what she said was substandard care in the region.

"It is my final wish to complete this affidavit so I can attempt to change systemic and dangerous patient care, dangerous practices and public safety issues," she wrote.

Now, the VA's Office of Accountability and Whistleblower Protection has opened an investigation.

"She wanted to make sure (that) somehow, beyond her passing, the VA would be held accountable," said her husband, Jerry Lund.

<http://www.wcvb.com/article/on-her-deathbed-va-doctor-blows-the-whistle-on-mass-vets-care/18739902>

WASHINGTON – Veterans Affairs Secretary David Shulkin said the past two weeks have been a “difficult time” as he grappled with the findings of a VA inspector general's investigation that concluded he improperly accepted airfare for his wife and Wimbledon tickets during a European trip last year. Shulkin said he learned from the experience and is eager to refocus on fixing the VA.

“I think as I look back upon it, there are lots of lessons that I could learn from this,” Shulkin said in an interview with USA TODAY. “And putting the agency in a position where we’ve had this distraction is something that I take accountability for. And I want to learn from that and move forward, so we can get back on the agenda that we all have to do, and that is to fix VA health care and fix VA services.”

... Shulkin said Monday that a subsequent review found the VA computer system was not breached and that Simpson’s email was not hacked. He said the incident that led to his raising such a possibility was her showing him an email from someone outside the VA using her name.

“I think what we know right now is that there was no compromise to the system,” he said. “I think — again I’m reaching beyond my expertise — but I think that there was no hacking, this was more what’s called spoofing, which is the impersonation of a person, but it’s not within the firewalls.”

<https://www.usatoday.com/story/news/politics/2018/02/27/va-secretary-david-shulkin-says-he-learned-lots-lessons-handling-travel-report/374247002/>

Jill Gerber
Communications Director
U.S. Office of Special Counsel

(b)(5)



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From: Gerber, Jill
To: Hartobey, Patrick; Kerner, Henry
Subject: RE: EPA OIG already investigating travel habits
Date: Tuesday, February 20, 2018 9:36:05 AM

I know (b)(5) but here's a Tweet of the letter. It's dated this past Friday, so maybe it hasn't been logged in anywhere here yet.

<https://twitter.com/weareoversight/status/964583006693453824>

From: Gerber, Jill
Sent: Tuesday, February 20, 2018 9:34 AM
To: Hartobey, Patrick (b)(6); @osc.gov>; Kerner, Henry (b)(6); (b)(7)(C) @osc.gov>
Subject: RE: EPA OIG already investigating travel habits

Thank you. Here's the story from the ABC reporter who inquired yesterday – it doesn't mention OSC. It also says the OIG is investigating travel. (b)(6); (b)(7)(C)

(b)(5); DP

(b)(6); (b)(7)(C)

<http://abcnews.go.com/Politics/epa-postpones-israel-trip-amid-scrutiny-administrators-travel/story?id=53197634>

From: Hartobey, Patrick
Sent: Tuesday, February 20, 2018 9:30 AM
To: Gerber, Jill (b)(6); @osc.gov>; Kerner, Henry (b)(5)
Subject: EPA OIG already investigating travel habits

(b)(5)

<http://thehill.com/policy/energy-environment/368478-epa-inspector-general-further-expands-probe-into-pruitt-travel>

This article has the OIG internal memo of investigation linked. Report expected by summer.

From: Lopez, Louis
To: Kerner, Henry
Cc: Millsaps, Travis
Subject: (b)(5)
Date: Thursday, February 8, 2018 4:37:35 PM
Attachments: (b)(5)

Here you go ... thanks!

From: [Lopez, Louis](#)
To: [Gerber, Jill](#); [Kerner, Henry](#); [Leavitt, Tristan](#); [Millsaps, Travis](#)
Cc: [Marrone, Ana](#); [Lopez, Louis](#)
Subject: (b)(5)
Date: Thursday, February 1, 2018 3:54:00 PM
Attachments: (b)(5)

Henry-

Attached is the (b)(5)

Thanks!

Louis Lopez
Associate Special Counsel
U.S. Office of Special Counsel
Safeguarding Employee Rights, Holding Government Accountable



NOTICE: This message and any attachments may contain information that is sensitive, confidential, or legally privileged. If you are not the intended recipient, please immediately notify the sender and delete this email from your system; you should not copy, use, or disclose its contents. Thank you for your cooperation.

From: [Leavitt, Tristan](#)
To: [IOSC](#)
Subject: Retired Homeland Security Exec Faulted for Costly Travel, Nepotism - Management - GovExec.com
Date: Wednesday, May 30, 2018 9:47:01 AM

Much like DHS OIG's EB-5 report, this one is a whistleblower special that wouldn't have happened without courageous FLETC employees blowing the whistle. (b)(5);(b)(6);(b)(7)(C)

(b)(5)

https://m.govexec.com/management/2018/05/retired-homeland-security-exec-faulted-costly-travel-nepotism/148550/?oref=govexec_today_nl

Retired Homeland Security Exec Faulted for Costly Travel, Nepotism



A year after she retired from the agency she led for 15 years, the director of the Homeland Security Department's law enforcement training center was found to have overspent on airfare and rental vehicles while ignoring agency rules for travel planning.

[Connie Patrick](#), who headed the Federal Law Enforcement Training Centers facility in Glynco, Ga., was also found to have been insensitive toward anti-nepotism policies during the hiring of her husband to an agency institute, according to a long-awaited [report](#) released last week by the DHS inspector general's office.

“Some of FLETC’s senior managers, including former Director Connie Patrick, failed to exercise the judgment, stewardship and leadership expected of DHS senior officials,” the IG wrote of a probe triggered by multiple complaints.

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Twenty of 38 domestic trips Patrick booked from Jan. 15, 2014, through June 23, 2016, at a cost of \$63,000, had approved expenses that exceeded the rates set by the General Services Administration by 300 percent, the IG wrote. The actual expenses for the other 18 trips topped authorized rates by 150 percent.

Internationally, her six trips costing about \$77,000 included one business-class flight to Sydney, Australia, in January 2014 that did not comply with policies set by GSA, DHS and her own FLETC, the IG said. The 14-hour flight cost \$14,000, as opposed to \$3,300 for the usual government rate. Her invoking of the exception that exists for long flights with tight schedules was not justified, auditors determined, because her schedule shows she had nearly two full work days between her arrival and her first work event. In addition, Patrick failed to request the required pre-approval for her business-class travel from the DHS undersecretary for management.

In addition, Patrick frequently rented intermediate, sport utility or full-size vehicles without the required justifications, incurring rental car fees in excess of \$3,000, the report found.

“The issues raised above demonstrate poor judgment and a failure on the part of senior FLETC leaders to ensure compliance with department policies and procedures,” acting IG John Kelly wrote to DHS Secretary Kirstjen Nielsen and FLETC Director Thomas Walters. “They also demonstrate a lack of sensitivity to the impact such decisions and actions may have had on other FLETC employees who, without full knowledge of the circumstances, came to believe that FLETC’s senior management had run amuck and the agency was being seriously mismanaged.”

Patrick was also faulted for claiming to have recused herself from the decision to hire her husband, John Patrick, for a term position at the FLETC Law Enforcement Leadership Institute, where he served from Jan. 3, 2010, to Sept. 11, 2011.

“While DHS OIG did not develop evidence demonstrating that Patrick actively attempted to influence the process that resulted in her husband being hired,” the investigators wrote, “her position as director of FLETC may have impacted the FLETC employees tasked with the decision whether to hire her husband. The pressure an employee may feel to hire or advance an agency head’s relative exists whether or not the agency head has technically recused himself or herself from the process.”

Patrick’s travel expenses before she retired last June for reasons the department said were unrelated had drawn scrutiny from the House Oversight and Government Reform Committee, then under the chairmanship of since-retired Rep. Jason Chaffetz, R-Utah.

The perceptions of misconduct raised by Patrick’s actions “contributed to low morale, mistrust, infighting, and political maneuvering that detracted from FLETC’s mission,” the IG concluded.

It recommended that FLETC and DHS implement better controls and internal tools to assure compliance with travel rules, including use of a centralized online travel arrangements system. Auditors also recommended that the agencies develop a more detailed nepotism policy and better train employees in compliance.

DHS agreed with all recommendations, and the IG promised to continue monitoring FLETC’s compliance as new leaders take over.

From: [Lopez, Louis](#)
To: [Kerner, Henry](#); [Leavitt, Tristan](#); [Millsaps, Travis](#)
Cc: [Marrone, Ana](#); [Hamrick, Erica](#); [Lopez, Louis](#)
Subject: (b)(5)
Date: Monday, May 7, 2018 5:47:08 PM
Attachments: (b)(5)

Henry-

Attached is the (b)(5)

Thanks!

-Louis

From: CQ Today
To: [Kerner, Henry](#)
Subject: CQ Daybook Extra
Date: Friday, May 4, 2018 4:33:54 PM
Attachments: CQ_Daybook_Extra-50216.txt

CQDaybook

WEEK AT A GLANCE: MAY 5 - 11, 2018

MARKUPS

MONDAY

FY2019 Energy and Water

5:30 p.m., 2362-B Rayburn

Energy and Water Development, and Related Agencies Subcommittee markup on "FY2019 Energy and Water."

Homeland Security/Postal Service Nominations

5:30 p.m., S-216, U.S. Capitol

Senate Homeland Security and Governmental Affairs Committee (Chairman Ron Johnson, R-Wis.) markup to vote on the nominations of Christopher C. Krebs to be Homeland Security undersecretary for national protection and programs directorate; David C. Williams to be a U.S. Postal Service governor; and Robert M. Duncan to be a U.S. Postal Service governor.

TUESDAY

Military Construction-VA/Legislative Branch Appropriations

10 a.m., 2359 Rayburn

House Appropriations Committee (Chairman Rodney Frelinghuysen, R-N.J.) markup of the FY2019 Military Construction and Veterans Affairs Appropriations Bill and FY2019 Legislative Branch Appropriations Bill.

Pending Legislation

10 a.m., 334 Cannon

House Veterans' Affairs Committee (Chairman Phil Roe, R-Tenn.) markup of H.R.299, the "Blue Water Navy Vietnam Veterans Act of 2017"; H.R.1972, the "VA Billing Accountability Act"; H.R.2147, the "VA Treatment Court Improvement Act of 2017"; H.R.3642, the "Military (Sexual Assault Victims Empowerment) SAVE Act"; H.R.3832, the "Veterans Opioid Abuse Prevention Act"; H.R.4245, the "Veterans' Electronic Health Record Modernization Oversight Act of 2017"; H.R.4334, the "Improving Oversight of Women Veterans' Care Act of 2017"; H.R.4451, the "Homeless Veterans' Reintegration Programs Reauthorization"; H.R.4635, to direct the Veterans Affairs secretary to increase the number of peer-to-peer counselors providing counseling for women veterans; H.R.4830, the "Servicemembers Improved Transition through Reforms for Ensuring Progress Act"; H.R.4958, the "Veterans' Compensation Cost-of-Living Adjustment Act of 2018"; H.R.5044, the "Service-Disabled Veterans Small Business Continuation Act"; H.R.5215, the "Veterans Affairs Purchase Card Misuse Mitigation Act"; H.R.5418, the "Veterans Affairs Medical-Surgical Purchasing Stabilization Act"; H.R.5520, the "VA Medicinal Cannabis Research Act of 2018"; and H.R.5674, the "VA Maintaining Internal Systems and Strengthening Outside Networks Act of 2018."

Pending Business

10:15 a.m., 1324 Longworth

House Natural Resources Committee (Chairman Rob Bishop, R-Utah) markup of H.R.221, the "Hydrographic Services Improvement Amendments Act"; H.R.1791, the "Mountains to Sound Greenway National Heritage Act"; H.R.2591, the "Modernizing the Pittman-Robertson Fund for Tomorrow's Needs Act of 2017"; H.R.3535, the "Ruffey Rancheria Restoration Act of 2017"; H.R.4032, the "Gila River Indian Community Federal Rights-of-Way, Easements and Boundary Clarification Act"; H.R.4506, the "Jobs for Tribes

Act"; H.R.4689, to authorize early repayment of obligations to the Bureau of Reclamation within the Northport Irrigation District in the state of Nebraska; H.R.5317, to repeal section 2141 of the Revised Statutes to remove the prohibition on certain alcohol manufacturing on Indian lands; and H.R.5655, the "Camp Nelson Heritage National Monument Act."

WEDNESDAY

National Defense Authorization Act

10 a.m., 2118 Rayburn

House Armed Services Committee (Chairman Mac Thornberry, R-Texas) markup of H.R.5515, the FY2019 National Defense Authorization Act.

Pending Legislation

10 a.m., 2172 Rayburn

House Foreign Affairs Committee (Chairman Ed Royce, R-Calif.) markup of H.R.5105, to establish the United States International Development Finance Corporation; H.R.5141, to make improvements to certain defense and security assistance provisions and to authorize assistance for Israel; H.R.5433, the "Hack Your State Department Act"; and H.R.5535, to amend the State Department Basic Authorities Act of 1956 regarding energy diplomacy and security within the Department of State.

Agriculture-Rural Development-FDA Appropriations

4 p.m., 2362-A Rayburn

Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Subcommittee (Chairman Robert B. Aderholt, R-Ala.) of House Appropriations Committee markup of the FY2019 Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations bill.

Commerce-Justice-Science Appropriations

5 p.m., 2362-B Rayburn

Commerce, Justice, Science, and Related Agencies Subcommittee (Chairman John Culberson, R-Texas) of House Appropriations Committee markup of the FY2019 Commerce, Justice, and Science Appropriations bill.

THURSDAY

Pending Business

10 a.m., 226 Dirksen

Senate Judiciary Committee (Chairman Charles E. Grassley, R-Iowa) markup of S.2559, the "Marrakesh Treaty Implementation Act"; and to vote on the nominations of Mark Jeremy Bennett, to be U.S. circuit judge for the Ninth Circuit; Nancy E. Brasel, to be U.S. district judge for the District of Minnesota; Robert R. Summerhays, to be U.S. district judge for the Western District of Louisiana; and Eric C. Tostrud, to be U.S. district judge for the District of Minnesota.

HEARINGS AND MEETINGS

MONDAY

House Committees

Pending Legislation

5 p.m., H-313, U.S. Capitol

House Rules Committee (Chairman Pete Sessions, R-Texas) meets to formulate a rule on H.R.2152, the "Citizens' Right to Know Act of 2017"; H.R.5645, the "Standard Merger and Acquisition Reviews Through Equal Rules Act of 2018"; and S.J.Res.57, Providing for congressional disapproval under chapter 8 of title 5, United States Code, of the rule submitted by Bureau of Consumer Financial Protection relating to the "Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act."

TUESDAY

House Committees

Opioid Epidemic/Federal Employees' Compensation Act

10 a.m., 2175 Rayburn

Workforce Protections Subcommittee (Chairman Bradley Byrne, R-Ala.) of House Education and the Workforce Committee hearing on "The Opioid Epidemic: Implications for the Federal Employees' Compensation Act."

Opioid Distribution and Diversion

10 a.m., 2123 Rayburn

Oversight and Investigations Subcommittee (Chairman Gregg Harper, R-Miss.) of House Energy and Commerce Committee hearing on "Combating the Opioid Epidemic: Examining Concerns About Distribution and Diversion."

Iran Nuclear Agreement Issues

10 a.m., 2172 Rayburn

House Foreign Affairs Committee (Chairman Ed Royce, R-Calif.) hearing on "Confronting the Iranian Challenge."

Opioid Abuse Crisis Challenges/Solutions

10 a.m., 2141 Rayburn

House Judiciary Committee (Chairman Robert W. Goodlatte, R-Va.) hearing on "Challenges and Solutions in the Opioid Abuse Crisis."

Blockchain Technology for Supply Chain Management

10 a.m., 2318 Rayburn

Oversight Subcommittee and Research and Technology Subcommittee joint hearing on "Leveraging Blockchain Technology to Improve Supply Chain Management and Combat Counterfeit Goods."

Blockchain Technology for Supply Chain Management

10 a.m., 2318 Rayburn

Oversight Subcommittee and Research and Technology Subcommittee joint hearing on "Leveraging Blockchain Technology to Improve Supply Chain Management and Combat Counterfeit Goods."

New Maritime Technologies

10 a.m., 2167 Rayburn

Coast Guard and Maritime Transportation Subcommittee (Chairman Duncan Hunter, R-Calif.) of House Transportation and Infrastructure Committee hearing on "Blue Technologies: Use of New Maritime Technologies to Improve Efficiency and Mission Performance."

Committee Member Assignment

10 a.m., 334 Cannon

House Veterans' Affairs Committee (Chairman Phil Roe, R-Tenn.) meeting to assign a new committee member.

Medicare Advantage Program

10 a.m., 1100 Longworth

Health Subcommittee (Chairman Peter Roskam, R-Ill.) of House Ways and Means Committee hearing on "The Current Status of and Quality in the Medicare Advantage Program."

Electric/Conventional Vehicle Policy

10:15 a.m., 2322 Rayburn

Environment Subcommittee (Chairman John Shimkus, R-Ill.) of House Energy and Commerce Committee hearing on "Sharing the Road: Policy Implications of Electric and Conventional Vehicles in the Years Ahead."

Small Business Travel/Tourism Issues

11 a.m., 2360 Rayburn

Economic Growth, Tax and Capital Access Subcommittee (Chairman Dave Brat, R-Va.) of House Small Business Committee hearing on "Travel and Tourism: A Small Business Angle."

Substance Use Disorder Treatment

1 p.m., 2123 Rayburn

Health Subcommittee (Chairman Michael C. Burgess, R-Texas) of House Energy and Commerce Committee hearing on "Improving the Coordination and Quality of Substance Use Disorder Treatment."

Census Progress Report

1 p.m., 2154 Rayburn

House Oversight and Government Reform Committee (Chairman Trey Gowdy, R-S.C.) hearing on "Progress Report on the 2020 Census."

VA Logistics Modernization

2 p.m., 334 Cannon

Oversight and Investigations Subcommittee (Chairman Jack Bergman, R-Mich.) of House Veterans' Affairs Committee hearing on "VA Logistics Modernization: Examining the RTLS (real-time locating systems) and Catamaran Projects."

Nuclear Waste Policy Amendments

3 p.m., H-313, U.S. Capitol

House Rules Committee (Chairman Pete Sessions, R-Texas) meets to formulate a rule on H.R.3053, the "Nuclear Waste Policy Amendments Act of 2018."

Senate Committees

Safe Integration of Unmanned Aircraft Systems

10 a.m., 253 Russell

Aviation Operations, Safety, and Security Subcommittee (Chairman Roy Blunt, R-Mo.) of Senate Commerce, Science and Transportation Committee hearing on "Keeping Pace with Innovation - Update on the Safe Integration of Unmanned Aircraft Systems into the Airspace."

Puerto Rico's Electric Grid

10 a.m., 366 Dirksen

Senate Energy and Natural Resources Committee (Chairwoman Lisa Murkowski, R-Alaska) hearing on the current status of Puerto Rico's electric grid and proposals for the future operation of the grid.

Intelligence Matters

2:30 p.m., 219 Hart

Senate Select Intelligence Committee (Chairman Richard M. Burr, R-N.C.) closed briefing on "Intelligence Matters."

WEDNESDAY

House Committees

American Indian/Alaska Native Public Witnesses (Part I)

9 a.m., 2007 Rayburn

Interior, Environment, and Related Agencies Subcommittee (Chairman Ken Calvert, R-Calif.) of House Appropriations Committee hearing on "American Indian/Alaska Native Public Witnesses." (Part One)

Energy Department Budget

9 a.m., 2318 Rayburn

House Science, Space and Technology Committee (Chairman Lamar Smith,

R-Texas) hearing on "An Overview of the Budget Proposal for the Department of Energy for FY2019."

Closing the Skills Gap Private Sector Solutions

10 a.m., 2175 Rayburn

Higher Education and Workforce Development Subcommittee (Chairman Brett Guthrie, R-Ky.) of House Education and the Workforce Committee hearing on "Closing the Skills Gap: Private sector solutions for America's Workforce."

Supplemental Nutrition Assistance Program

10 a.m., 2154 Rayburn

Health Care, Benefits and Administrative Rules Subcommittee and Intergovernmental Affairs Subcommittee joint hearing on "Program Integrity for the Supplemental Nutrition Assistance Program."

Supplemental Nutrition Assistance Program

10 a.m., 2154 Rayburn

Health Care, Benefits and Administrative Rules Subcommittee and Intergovernmental Affairs Subcommittee joint hearing on "Program Integrity for the Supplemental Nutrition Assistance Program."

Legislative Options Addressing the Jobs Gap

10 a.m., 1100 Longworth

Human Resources Subcommittee (Chairman Adrian Smith, R-Neb.) of House Ways and Means Committee hearing on "Jobs and Opportunity: Legislative Options to Address the Jobs Gap."

Member's Day

10:30 a.m., H-140, U.S. Capitol

Defense Subcommittee (Chairwoman Kay Granger, R-Texas) of House Appropriations Committee hearing on "Defense Member Day."

Disabled People in Small Business

11 a.m., 2360 Rayburn

House Small Business Committee (Chairman Steve Chabot, R-Ohio) hearing on "Ready, Willing and Able to Work: How Small Businesses Empower People with Developmental Disabilities."

Sub-Saharan Africa Faith-Based Actors/Political Speech

1:30 p.m., 2172 Rayburn

Africa, Global Health, Global Human Rights and International Organizations Subcommittee (Chairman Christopher H. Smith, R-N.J.) of House Foreign Affairs Committee hearing on "Protecting Civil Society, Faith-Based Actors, and Political Speech in Sub-Saharan Africa."

Senate Committees

Haspel Nomination

9:30 a.m., 216 Hart

Senate Select Intelligence Committee (Chairman Richard M. Burr, R-N.C.) hearing on the nomination of Gina Haspel to be director of the Central Intelligence Agency.

Bureau of Land Management/Forest Service Law Enforcement

10 a.m., 366 Dirksen

Public Lands, Forests and Mining Subcommittee (Chairman Mike Lee, R-Utah) of Senate Energy and Natural Resources Committee hearing on law enforcement programs at the Bureau of Land Management and the Forest Service.

Water Infrastructure Improvement

10 a.m., 406 Dirksen

Senate Environment and Public Works Committee (Chairman John Barrasso, R-Wyo.) hearing on the "America's Water Infrastructure Act of 2018."

Pending Nominations

10 a.m., 226 Dirksen

Senate Judiciary Committee (Chairman Charles E. Grassley, R-Iowa) hearing on pending nominations.

Intelligence Matters

Noon, 219 Hart

Senate Select Intelligence Committee (Chairman Richard M. Burr, R-N.C.) closed briefing on "Intelligence Matters."

International Predatory Economic Practices

2:30 p.m., 419 Dirksen

Multilateral International Development, Multilateral Institutions, and International Economic, Energy, and Environmental Policy Subcommittee (Chairman Todd Young, R-Ind.) of Senate Foreign Relations Committee hearing on "A Multilateral and Strategic Response to International Predatory Economic Practices."

U.S. Spending in Afghanistan Oversight

2:30 p.m., 342 Dirksen

Federal Spending Oversight and Emergency Management Subcommittee (Chairman Rand Paul, R-Ky.) of Senate Homeland Security and Governmental Affairs Committee hearing on "Afghanistan in Review: Oversight of U.S. Spending in Afghanistan."

Sweeney Nomination

2:30 p.m., 628 Dirksen

Senate Indian Affairs Committee (Chairman John Hoeven, R-N.D.) hearing on

the nomination of Tara Mac Lean Sweeney to be assistant Interior secretary for Indian affairs.

THURSDAY

House Committees

American Indian/Alaska Native Public Witnesses (Part II)

9 a.m., 2007 Rayburn

Interior, Environment, and Related Agencies Subcommittee (Chairman Ken Calvert, R-Calif.) of House Appropriations Committee hearing on "American Indian/Alaska Native Public Witnesses." (Part Two)

Members' Day

9 a.m., 1334 Longworth

House Budget Committee (Chairman Steve Womack, R-Ark.) hearing on members' ideas for the FY2019 budget resolution.

Member's Day

10 a.m., HT-2, U.S. Capitol

State, Foreign Operations and Related Programs Subcommittee (Chairman Harold Rogers, R-Ky.) of House Appropriations Committee hearing on "State and Foreign Operations Member Day."

State of Electric Transmission Infrastructure

10 a.m., 2123 Rayburn

Energy Subcommittee (Chairman Fred Upton, R-Mich.) of House Energy and Commerce Committee hearing on "Examining the State of Electric Transmission Infrastructure: Investment, Planning, Construction, and Alternatives."

Senate Committees

Pending Nominations

9:30 a.m., 216 Hart

Senate Armed Services Committee (Chairman John McCain, R-Ariz.) hearing on the nominations of Lisa J. Porter to be deputy Defense undersecretary for research and engineering; James N. Stewart to be assistant Defense secretary for manpower and reserve affairs; James H. Anderson to be assistant Defense secretary for strategy, plans and capabilities; Gregory J. Slavonic to be assistant secretary of the Navy for manpower and reserve affairs; and Charles P. Verdon to be deputy administrator for defense programs at the National Nuclear Security Administration.

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Issue-Id: 184028506:cqtodayextra:1289

From: Lopez, Louis
To: Kerner, Henry
Cc: Millsaps, Travis; Leavitt, Tristan; Marrone, Ana
Subject: Re: (b)(5); (b)(7)(C)
Date: Friday, April 20, 2018 1:43:13 PM

Great; thanks!

On Apr 20, 2018, at 10:54 AM, Kerner, Henry (b)(6);(b)(7)(C) wrote:

Thanks, Travis. (b)(5);(b)(6);(b)(7)(C) Please see attached.
All three are now good to go.

Best,
Henry

From: Millsaps, Travis
Sent: Friday, April 20, 2018 9:29 AM
To: Lopez, Louis (b)(6);(b)(7)(C) Kerner, Henry (b)(6);(b)(7)(C) Leavitt, Tristan (b)(6);(b)(7)(C)
Cc: Marrone, Ana (b)(6);(b)(7)(C)
Subject: RE: (b)(5);(b)(7)(C) (b)(5)

Thank you Louis. Please find attached the 3 letters that are ready to go. (b)(5)
(b)(5)

Please let me know if you have any questions or concerns.

Best,

Travis

From: Lopez, Louis
Sent: Thursday, April 19, 2018 5:21 PM
To: Kerner, Henry (b)(6);(b)(7)(C) Leavitt, Tristan (b)(6);(b)(7)(C) Millsaps, Travis (b)(6);(b)(7)(C)
Cc: Marrone, Ana (b)(6);(b)(7)(C) Lopez, Louis (b)(6);(b)(7)(C)
Subject: (b)(5);(b)(7)(C) (b)(5)

Henry-

The attached letters should (b)(5); DP Only the letter to

(b)(5) mentions the regular senior staff meetings, and we ensured the footnote was synchronized. Please review and comment.

Thanks!

-Louis

(b)(5).docx>

From: [Lopez, Louis](#)
To: [Kerner, Henry](#); [Marrone, Ana](#); [Millsaps, Travis](#)
Subject: (b)(5)
Date: Wednesday, April 18, 2018 5:33:16 PM

Yes, we will review and get back to you.

Thanks!

From: Kerner, Henry
Sent: Wednesday, April 18, 2018 5:28 PM
To: Lopez, Louis (b)(6);(b)(7)(C) Marrone, Ana (b)(6);(b)(7)(C) Millsaps, Travis
(b)(6);(b)(7)(C)
Subject: Kushner closure to subj -

Hello Louis and Ana,

(b)(5)

Thanks,
Henry

From: Kerner, Henry
Subject: (b)(6);(b)(7)(C)
Date: Wednesday, April 18, 2018 5:23:08 PM
Attachments: (b)(6);(b)(7)(C)

From: Kerner, Henry

Subject: (b)(6)-(b)(7)(C)

Date: Wednesday, April 18, 2018 5:22:00 PM

Attachments: (b)(6)-(b)(7)(C)

From: Kerner, Henry
To: Millsaps, Travis
Subject: (b)(6):(b)(7)(C)
Date: Wednesday, April 18, 2018 5:06:00 PM

Great, thank you, Travis!

From: Millsaps, Travis
Sent: Wednesday, April 18, 2018 5:06 PM
To: Kerner, Henry <(b)(6):(b)(7)(C)>
Subject: (b)(6):(b)(7)(C)

Hi Henry,

(b)(6):(b)(7)(C)

Please let me know if you have any questions or concerns.

Best,

Travis

From: Lopez, Louis
Sent: Wednesday, April 18, 2018 2:14 PM
To: Kerner, Henry (b)(6):(b)(7)(C) Leavitt, Tristan (b)(6):(b)(7)(C) Millsaps, Travis (b)(6):(b)(7)(C)
Cc: Marrone, Ana (b)(6):(b)(7)(C) Lopez, Louis (b)(6):(b)(7)(C)
Subject: (b)(6):(b)(7)(C)

Henry-

Attached are the (b)(5); (b)(9) in the (b)(6):(b)(7)(C) Please review and comment.

Thanks!

-Louis

From: Millsaps, Travis
To: Kerner, Henry
Subject: (b)(6);(b)(7)(C)
Date: Wednesday, April 18, 2018 5:05:34 PM
Attachments: (b)(6);(b)(7)(C)

Hi Henry,

(b)(6);(b)(7)(C)

Please let me know if you have any questions or concerns.

Best,

Travis

From: Lopez, Louis
Sent: Wednesday, April 18, 2018 2:14 PM
To: Kerner, Henry (b)(6);(b)(7)(C) Leavitt, Tristan (b)(6);(b)(7)(C) Millsaps, Travis
(b)(6);(b)(7)(C)
Cc: Marrone, Ana (b)(6);(b)(7)(C) Lopez, Louis (b)(6);(b)(7)(C)
Subject: (b)(6);(b)(7)(C)

Henry-

Attached are (b)(5); DP in the (b)(6);(b)(7)(C) Please review and comment.

Thanks!

-Louis

From: [Hartobey, Patrick](#)
To: [Marrone, Ana](#)
Cc: [Kerner, Henry](#)
Subject: FW: Letter from Senator Carper
Date: Monday, March 19, 2018 5:30:32 PM
Attachments: (b)(7)(C);(b)(5);(b)(6)

Ana—We received the attached from Sen. Carper regarding the Trump 2020 Campaign Manager announcement with (b)(7)(C);(b)(5);(b)(6)

From: Leavitt, Tristan
Sent: Monday, March 19, 2018 4:25 PM
To: Kerner, Henry <HKerner@osc.gov>; Hartobey, Patrick <PHartobey@osc.gov>; Millsaps, Travis <TMillsaps@osc.gov>
Subject: FW: Letter from Senator Carper

From: Bamiduro, Portia (HSGAC) <(b)(7)(C);(b)(7)(C);(b)(6)>
Sent: Monday, March 19, 2018 3:46 PM
To: Leavitt, Tristan <(b)(7)(C);(b)(6)>
Cc: Berrios, Roberto (HSGAC) <(b)(7)(C);(b)(6)>
Subject: Letter from Senator Carper

Hello Tristan:

Please find attached a letter regarding Hatch Act compliance for Special Counsel Kerner from Senator Tom Carper. Kindly confirm receipt, and please feel free to reach out if you have any questions regarding this inquiry.

Best,

(b)(7)(C);(b)(6)

(b)(7)(C);(b)(6) | **Democratic Chief Counsel**
Senator Tom Carper (D-DE), Ranking Member
Permanent Subcommittee on Investigations
Committee on Homeland Security & Governmental Affairs
(202) (b)(7)(C);(b)(6)

From: Gerber, Jill
To: Everybody
Subject: Daily Clips
Date: Tuesday, March 13, 2018 10:51:33 AM

Office of Special Counsel

Last June, President Donald Trump fulfilled a campaign promise by signing a bipartisan bill to make it easier to fire employees of the Department of Veterans Affairs. The law, a rare rollback of the federal government's strict civil-service job protections, was intended as a much-needed fix for an organization widely perceived as broken. "VA accountability is essential to making sure that our veterans are treated with the respect they have so richly earned through their blood, sweat and tears," Trump said that day. "Those entrusted with the sacred duty of serving our veterans will be held accountable for the care they provide." ... "The VA feels they can do whatever they want with people with impunity," said Eric Pines, an employment lawyer who represents multiple fired VA workers. "It's a day-and-night feel since the Trump administration came into office." (The Office of Special Counsel, or OSC, an independent federal agency that investigates retaliation against whistleblowers, said it's too soon to say if complaints have increased since the law took effect.) ...

Ironically, the problem stemmed from the fact that Mason, then the chief of medical administration service for the VA system that covers the regions of Laredo, Corpus Christi and more in Texas, wanted to avoid the very problems that led to scandal in Phoenix. A 30-year veteran of the agency with a spotless record, Mason, 54, complained of a long backlog in medical appointments. When a supervisor wondered why her metrics looked bad, she answered that the problem was a lack of physicians. She didn't want to reset the clock on appointments, which she said "would look like we are gaming the system ... to make the number look good."

Eventually, after Mason escalated the issue to a more senior supervisor, she was reprimanded for "not following instructions" on a training document, according to a memo obtained by ProPublica. Mason countered that she lacked staff and had received conflicting directions. The reprimand was eventually withdrawn.

Still, sensing hostility, Mason asked to be transferred to a different facility. She filed a whistleblower complaint with OSC, claiming mismanagement and retaliation.

<https://www.propublica.org/article/veterans-affairs-the-trump-administration-campaign-to-weaken-civil-service-ramps-up>

Office of Special Counsel/Hatch Act

IN THE early days of the Trump administration, presidential counselor Kellyanne Conway ran afoul of ethics rules when she urged the president's supporters to buy products under his daughter's brand. The White House said she was being provided with additional ethics training and recurrence was "highly unlikely." Some thought stronger disciplinary action should have been taken, but at least there was some acknowledgment of wrongdoing and an implied promise to do better.

Unfortunately, it's not clear the training did much good, as the Office of Special Counsel made clear recently in finding Ms. Conway in violation of federal law barring the mixing of partisan politics with official government business. More troubling than the latest violation was the White House's refusal to do anything about it or even acknowledge it.

https://www.washingtonpost.com/opinions/kellyanne-conway-broke-the-law-the-white-house-shrugs/2018/03/12/4ac3d3ac-2251-11e8-94da-ebf9d112159c_story.html

utm_term=.3faa77a6cb0b

WASHINGTON — President Trump's social media director, Dan Scavino Jr., posted a message on his government Twitter account calling for the defeat of a Republican congressman who had angered the president.

His West Wing counselor, Kellyanne Conway, weighed in on the Alabama Senate race during television interviews from the White House lawn.

His son-in-law, Jared Kushner, used his White House title on a news release for Mr. Trump's re-election bid.

All had complaints filed against them alleging violations of the Hatch Act, the federal law that since 1939 has barred government officials from using their positions to engage in partisan politics.

... The Office of Special Counsel, the federal agency which enforces the Hatch Act, has an email inbox and telephone hotline devoted to fielding complaints, and, according to one official, has heard about more potential violations since Mr. Trump was sworn in than is typical, particularly three years before a general election campaign. Over the eight years of Barack Obama's presidency, for example, the office received a total of six complaints about conduct by White House officials — a number Mr. Trump's administration has already surpassed.

<https://www.nytimes.com/2018/03/12/us/politics/trump-white-house-hatch-act.html>

Walter Shaub mentioned OSC, Henry, and the Hatch Act a couple of minutes in during an interview on CNN this morning. A link to the interview is here:

<https://www.rawstory.com/2018/03/former-ethics-chief-explains-cnn-trumps-cabinet-officials-bad-jobs/#.Wqe4RTkgmMU.twitter>

The Office of Special Counsel rules a Postal Service employee violated the Hatch Act by running for political office twice. OSC found a USPS employee in Philadelphia ran for a local government council position, and a local election precinct position. The postal employee won the latter election and is currently serving out his term in office. The Hatch Act forbids federal and political employees from running for political office. OSC has filed a complaint with the Merit Systems Protection Board. (Office of Special Counsel)

<https://federalnewsradio.com/federal-newscast/2018/03/agencies-team-up-to-destroy-asteroid-potentially-heading-for-earth/>

Jill Gerber
Communications Director
U.S. Office of Special Counsel

(b)(7)(C)-(b)(6)



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From: Gerber, Jill
To: Everybody
Subject: Daily Clips
Date: Monday, March 12, 2018 11:09:45 AM

Office of Special Counsel

It was a small but brave blow for honest, law-abiding government. CNN reported: The US Office of Special Counsel announced Tuesday that White House aide Kellyanne Conway violated the Hatch Act on two occasions by “advocating for and against candidates” in last year’s Alabama Senate special election.

In a new report, the OSC special counsel, Henry Kerner, pointed to Conway’s TV interviews conducted in her “official capacity” in November and December of last year. The agency said Conway “impermissibly mixed official government business with political views about candidates in the Alabama special election.”

Kerner explained in a one-page letter, “Ms. Conway was aware of the Hatch Act’s prohibitions when she chose during both interviews to repeatedly identify reasons why voters should support one candidate over another in the Alabama special election.”

Kerner, as required by law, referred the matter to her boss, President Trump — who will do nothing, we can easily predict. Ethics? Following rules? Separating political and personal concerns from the people’s business? Unheard of in this White House. As surely as night follows day, deputy press secretary Hogan Gidley responded with a ludicrous defense. “Kellyanne Conway did not advocate for or against the election of any particular candidate,” he lied. “She simply expressed the president’s obvious position that he have people in the House and Senate who support his agenda.” In fact in two interviews she gave a list of reasons not to vote for now Sen. Doug Jones (D-Ala.).

https://www.washingtonpost.com/blogs/right-turn/wp/2018/03/11/distinguished-person-of-the-week-someone-takes-his-oath-seriously/?utm_term=.e4a4245df420

The General Services Administration’s communications policies are confusing, lack transparency and risk violating whistleblower protection laws by requiring centralized approval, a watchdog found.

The agency’s efforts to respond to congressional inquiries in an “official” and consistent way appear to go against the intent of the 2012 Whistleblower Protection Enhancement Act, GSA’s inspector general said in a report released on Thursday.

Whistleblower advocates have said Trump administration employee nondisclosure policies they see as “gag orders” could impede legitimate whistleblowing to Congress or the press. The Office of Special Counsel, which investigates whistleblower retaliation complaints, has warned against such gag rules.

GSA’s responses to Congress on such controversies as President Trump’s GSA lease on Washington’s Old Post Office Building that became a Trump hotel have prompted frustration among some lawmakers, who have said GSA ignores information requests that don’t come from majority-party chairmen.

From 2015 through 2017, the IG noted, GSA implemented several published and unpublished policies governing responses to congressional inquiries. “These policies should have contained, but did not contain, the whistleblower protection language that the WPEA requires be included in nondisclosure policies,” the IG said. That failure “increases the risk of confusion and may chill the willingness of potential whistleblowers to come forward.”

<http://www.govexec.com/management/2018/03/watchdog-gsa-communications-policies-could-chill-whistleblowing/146563/>

Florida lawmakers in Washington, D.C., are demanding accountability from the Miami Veterans Affairs Medical Center's leadership for their alleged failure to heed an employee's concerns about the reliability of the facility's HIV testing methods.

U.S. Sen. Marco Rubio, a Florida Republican, issued a letter on Friday calling for an investigation into the Miami VAMC and urging VA Sec. David Shulkin to "hold the appropriate officials accountable" after eight military veterans who were tested for HIV received a different result when screened for a second time by an outside lab.

"This is unacceptable, and our nation's veterans deserve better," Rubio said in the letter. He also urged Shulkin to follow the recommendations of an independent federal investigator and ensure that every VA facility in the country is using the latest HIV testing methods.

... The U.S. Office of Special Counsel said it prompted the VA to investigate a worker's concerns that the Miami facility was slow to adopt the latest HIV testing methods as required by an agency mandate.

VA investigators reported that they were unable to substantiate the worker's claims. But the OSC blasted the agency's investigation, noting that VA investigators loosely interpreted the deadline for the Miami facility to comply with the HIV testing requirements.

<http://www.miamiherald.com/news/local/community/miami-dade/article204405184.html>

This letter supplements Citizens for Responsibility and Ethics in Washington's ("CREW") February 27, 2018 request that the Office of Special Counsel ("OSC") investigate whether Senior Advisor and Assistant to the President Jared Kushner violated the Hatch Act by using his official title and position in a campaign press release in which he praised President Donald J. Trump's 2020 campaign manager.

CREW respectfully requests that OSC also consider whether additional comments made by Mr. Kushner about the 2020 campaign manager in a White House staff meeting constitutes a violation of the Hatch Act.

The Washington Post reported that Mr. Kushner briefed senior staff on Wednesday, February 28, 2018, during a White House staff meeting on the selection of Brad Parscale to be the 2020 campaign manager. According to the Post, Mr. Kushner indicated that Mr. Parscale was chosen because of his "digital savvy, and also stressed that Parscale has the full support of the president and his family." The Post noted that it is "unusual for government officials to openly discuss campaign politics in a White House staff meeting."

<https://www.citizensforethics.org/legal-filing/crew-sends-osc-supplement-kushner-hatch-act-complaint/>

(CNN) The White House held private meetings with four Cabinet-level officials last month to scold them for embarrassing stories about questionable ethical behavior at their respective agencies, sources familiar with the sessions tell CNN.

Internal watchdogs have launched at least nine audits, reviews or investigations across several Cabinet agencies, and stories about first-class travel, expensive office furniture, and internal strife have become commonplace.

Interior Secretary Ryan Zinke, Housing and Urban Development Secretary Ben Carson, Veterans Affairs Secretary David Shulkin and Environmental Protection Agency Administrator Scott Pruitt all met with officials from the White House counsel's office and the Cabinet liaison.

The meetings, held at chief of staff John Kelly's request, were intended to provide "a clear message that optics matter," the sources said.

... Zinke's travel is also under investigation by both the Office of Special Counsel and the Interior Department's inspector general, including a visit he had with a hockey team owned by

a former donor to his 2014 campaign.

<https://www.cnn.com/2018/03/09/politics/cabinet-secretaries-ethical-behavior/index.html>

WASHINGTON — Even the local newspaper thought it was odd when Interior Secretary Ryan Zinke stopped briefly last month at a small Pennsylvania town bearing a huge ceremonial check and the promise of millions of dollars to clean up abandoned coal mine lands.

Zinke's visit to the East Bethlehem fire hall seemed hastily planned and "was baffling – to local residents, the media, and likely, those who planned his appearance," the Observer-Reporter wrote in an editorial.

"You could call it a news conference, a town hall meeting, a political op," the paper concluded. "And you could call it something else: fake news."

Government watchdog groups and at least two congressional Democrats say Zinke's trip smells of politics and seemed designed to benefit the GOP candidate in a special congressional election that Republicans are in danger of losing on Tuesday.

... Pennsylvania will receive \$56 million of the \$300 million in grants that Zinke announced will be available to clean up abandoned mine lands in 25 states and three Native American tribes. One of the sites to be reclaimed is about a half-mile from where Zinke spoke.

Regardless, two congressional Democrats – Reps. Raul Grijalva of Arizona and Donald McEachin of Virginia – sent a letter Wednesday to the U.S. Office of Special Counsel and asked for an investigation into whether Zinke's trip was a violation of the Hatch Act, which restricts federal employees from using their jobs to influence elections.

<https://www.usatoday.com/story/news/politics/2018/03/11/interior-secretary-ryan-zinke-accused-mixing-politics-government-business/411223002/>

General News

The Interior Department's reassignment of a large swath of its top career employees sparked confusion and pushback, recently released internal emails show, prompting some executives to quit and others to question the wisdom of the forced transfers.

The decision to require roughly three-dozen Senior Executive Service employees to take on new roles "as a condition of employment" was met with criticism since the reassignments came to light in July, but Interior has defended them as in the business interest of the department. Some of the transfers were justified because Secretary Ryan Zinke wanted to move more jobs out of headquarters offices in Washington, D.C., and Denver, the emails recently released through a Freedom of Information Act request show, though more than half of them pushed or kept the employees in the capital region.

In some cases, Daniel Jorjani, Zinke's choice for principal deputy solicitor, directed human resources staff to make organizational changes by taking "whatever administrative actions that are required." The specifics of those changes were redacted in the released emails.

<http://www.govexec.com/management/2018/03/political-pressure-confusion-marked-interiors-reassignments-career-execs/146531/WqaF4r6atVE.email>

Roseburg Veterans Affairs Medical Center Chief of Staff Ratnabali Ranjan has been reassigned.

Interim Director Dave Whitmer sent an email to staff and the media Thursday stating Ratnabali Ranjan will be reassigned to lead the VA's Office of Community Care.

It's the latest in a string of changes to the Roseburg VA's leadership team. The VA has been under investigation by the Office of the Medical Inspector and the VA Office of Accountability and Whistleblower Protection in the wake of allegations of bullying and

retaliation against employees.

Investigators described the VA's culture as "toxic" and said senior VA leaders created an environment of intimidation. The OMI also found problems with medical care at the VA, according to a summary report released last week.

https://www.nrtoday.com/news/veterans/roseburg-va-chief-of-staff-reassigned/article_a780c4de-9e36-5913-a236-7582b98513e5.html

The intelligence community whistleblower ombudsman threatened with firing last year has received a show of support from two nonprofits long critical of enforcement of disclosure rights in the national security workforce.

The Government Accountability Project and the Project on Government Oversight on March 2 teamed up to send a letter to Director of National Intelligence Dan Coats saying that Dan Meyer—who is on administrative leave pending a decision on his future by Coats' deputy—deserves a delay until a new intelligence community inspector general is sworn in.

<http://www.govexec.com/management/2018/03/whistleblower-advocates-defend-embattled-intelligence-ombudsman/146413/>

Jill Gerber
Communications Director
U.S. Office of Special Counsel

202/ (b)(6);



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From: [Hardin, Jessica](#)
To: [Kerner, Henry](#); [Leavitt, Tristan](#); [Millsaps, Travis](#); [Gerber, Jill](#); [Hartobey, Patrick](#)
Subject: (b)(7)(C);(b)(6);(b)(5)
Date: Tuesday, March 6, 2018 8:52:54 AM
Attachments: (b)(7)(C);(b)(6);(b)(5)

From: Hardin, Jessica
Sent: Monday, February 26, 2018 4:17 PM
To: Marrone, Ana <AMarrone@osc.gov>
Subject: (b)(7)(C);(b)(6);(b)(5)

From: Hardin, Jessica
Sent: Monday, February 26, 2018 4:09 PM
To: Kerner, Henry <(b)(7)(C);(b)(6);(b)(5)>
Subject: (b)(7)(C);(b)(6);(b)(5)

Is attached

Jessica Hardin
Confidential Assistant to the Special Counsel
U.S. Office of Special Counsel
p: (202) (b)(7)(C) | f: (202) 254-3711 | e: (b)(7)(C);(b)(6);(b)(5)

From: Gerber, Jill
To: Everybody
Subject: Daily Clips
Date: Thursday, March 1, 2018 11:10:46 AM

Office of Special Counsel

At least eight military veterans who were tested for HIV at the Miami VA Medical Center received a different result when they were screened for a second time by an outside lab — a discrepancy discovered only after an employee at the Miami facility complained to outside agencies and the White House that local managers were ignoring his concerns, according to an independent federal investigator.

The Department of Veterans Affairs investigated the complaints and said it was unable to substantiate the employee's claims after a four-day visit to the Miami VAMC in October 2016.

On Wednesday the U.S. Office of Special Counsel, an independent federal investigative agency, called the VA's findings "unreasonable" and expressed "incredulity" that the Miami VAMC complied with new HIV testing policy only after the employee complained to outside agencies.

In a letter to President Trump, Special Counsel Henry J. Kerner said VA investigators were unable to substantiate the claims because they loosely interpreted the deadline for the Miami VAMC to comply with the new HIV testing policy.

<http://www.miamiherald.com/news/local/community/miami-dade/article202758074.html>

The chairman of the House Committee on Oversight and Government Reform sent a letter to Housing and Urban Development Secretary Ben Carson Wednesday requesting "all documents and communications" related to the redecorating of his office and HUD's handling of a whistleblower. ...

Kaplan, the lawyer for Foster, said the Office of Special Counsel could determine whether it will move forward and investigate Foster's complaint as early as next week. The special counsel is separate from the Justice Department counsel investigating contacts between Russian officials and the Trump presidential campaign.

<https://www.npr.org/2018/02/28/589493664/ben-carson-and-hud-face-allegations-of-lavish-spending-including-31-000-furniture>

Office of Special Counsel/Hatch Act

Washington—Presidential adviser Jared Kushner appears to have violated the Hatch Act, according to a complaint filed today by Citizens for Responsibility and Ethics in Washington (CREW) with the Office of the Special Counsel (OSC).

Kushner likely violated the Hatch Act in a press release sent out by the Trump presidential campaign this morning. Kushner gave a quote about the the president's reelection campaign and is identified as "Jared Kushner, Senior Advisor and Assistant to the President, and President Trump's son-in-law." The Hatch Act prohibits the use of official title for political purposes.

"The rules are clear that government officials aren't allowed to use their positions for campaign activity," CREW Executive Director Noah Bookbinder said. "He may have a close relationship with the president, but the rules still apply to Jared Kushner."

<https://www.citizensforethics.org/press-release/crew-files-hatch-act-complaint-jared-kushner/>

General News

A few members of Congress want to make good on the president's call to give every cabinet secretary the authority to discipline and remove their employees more quickly.

Rep. Lloyd Smucker (R-Pa.) has introduced the Labor Department Accountability Act, which would give the secretary expedited authority to suspend, involuntarily reassign, demote or remove employees and senior executives for misconduct or poor performance.

Rep. Francis Rooney (R-Fla.) introduced the similarly titled Education Department Accountability and Whistleblower Protection Act.

With a few omissions, both bills are strikingly similar to the VA Accountability and Whistleblower Protection Act, which Congress passed and the president signed with much fanfare last summer.

<https://federalnewsradio.com/legislation/2018/02/house-bills-would-extend-same-va-removal-authorities-to-labor-education-employees/>

Boston —Federal investigators responded today to a 5 Investigates report on a top Veterans Administration doctor who spoke out -- on her death bed -- about dangerous health care practices in Massachusetts VA hospitals.

The allegations by Dr. Sarah Kemble included substandard care, harmful delays in care and retaliation against her when she reported it.

In December, just days before she lost her battle with cancer, Kemble testified about what she called systemic failure at the VA.

"We make sure every voice is heard throughout our system," said Peter O'Rourke, head of the VA's Office of Accountability and Whistleblower Protection until his recent appointment as VA chief of staff.

O'Rourke said Kemble's voice will be heard beyond her death.

"The investigations are ongoing, so we'll withhold comment from that right now, but we have a solid understanding of what Dr. Kemble brought up," O'Rourke said.

<http://www.wcvb.com/article/federal-investigators-react-to-5-investigates-report-on-poor-care-for-veterans/18931019>

Jill Gerber
Communications Director
U.S. Office of Special Counsel

(b)(7)(C)-(b)(6)



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From: Gerber, Jill
To: Everybody
Subject: Daily Clips
Date: Wednesday, February 28, 2018 10:07:22 AM

Office of Special Counsel

A week before Ben Carson was confirmed as secretary of Housing and Urban Development, a career official at the agency complained to a colleague about the hours she had to spend curtailing plans to redecorate his office.

Helen Foster, then HUD's chief administration officer, wrote in an email that she had to answer "endless questions about why I won't fund more than the \$5000 limit" for redecorating the office. "I do like 3 meetings a day on that," she wrote on Feb. 22, 2017. "I hate this."

Foster was transferred to a new position in July, and she later told a watchdog agency that she believed she was demoted in retaliation for concerns she expressed about office expenses and potential violations of open-records laws. Foster said she had been excluded from handling Freedom of Information Act requests filed by the Democratic National Committee — even though she oversaw department FOIA responses — because one of President Trump's appointees believed she was a Democrat.

On Tuesday, HUD spokesman Raffi Williams denied that the department overspent to redecorate Carson's office, saying that used chairs were brought up from a basement and that blinds were replaced at a cost of \$3,400. Williams said he could not address the specific allegations in Foster's complaint, including her charges that the redecorating effort was spurred by Carson's wife, Candy, and that the Democrats' FOIA requests received special treatment.

... Foster's complaint was filed on Nov. 3 with the Office of Special Counsel, an independent agency that handles employment complaints from federal employees. Foster charged that she was reassigned to serve as the department's chief privacy and FOIA officer, a lower position. Foster's lawyer, Joseph Kaplan, wrote that she "has suffered much humiliation and loss of reputation, and harm to career advancement, as a result of this retaliatory assignment."

https://www.washingtonpost.com/politics/i-do-like-3-meetings-a-day-on-that-hud-official-complained-about-effort-to-redecorate-carsons-office/2018/02/27/b9ce3146-1be6-11e8-b2d9-08e748f892c0_story.html?utm_term=.21e87ddbe244

Washington (CNN) The former chief administrative officer for the Department of Housing and Urban Development says she was demoted in part for refusing to spend more than was legally allowed to redecorate Secretary Ben Carson's new office.

HUD inspector general looking into role Ben Carson's family has played

In a November 2017 complaint obtained by CNN, Helen Foster said she was told to "find money" beyond the legal \$5,000 limit for redecorating. In one instance, she says a supervisor said that "\$5,000 will not even buy a decent chair."

Foster's sworn complaint with the Office of Special Counsel, the independent agency charged with investigating whistleblower complaints made by government employees, says that after she refused to misuse taxpayer dollars for the office redecoration project she was "retaliated against by being taken out of my position as Chief Administrative Officer."

...

Foster, who is still a HUD employee, though detailed to another agency, told CNN that she was contacted by the Office of Special Counsel (this office is unrelated to Justice Department special counsel Robert Muller) for an interview last week. The office has 120 days to decide whether it will launch an official investigation. If the OSC finds wrongdoing, it can pursue

disciplinary actions against the agency, arbitrate the situation and it could also seek relief on Foster's behalf -- including getting her previous job back.

OSC spokeswoman Jill Gerber told CNN that the office "can't comment on or confirm any pending cases."

<https://www.cnn.com/2018/02/27/politics/ben-carson-office-furniture-whistleblower/index.html>

WASHINGTON — Department of Housing and Urban Development officials spent \$31,000 on a new dining room set for Secretary Ben Carson's office in late 2017 — just as the White House circulated its plans to slash HUD's programs for the homeless, elderly and poor, according to federal procurement records.

The purchase of the custom hardwood table, chairs and hutch came a month after a top agency staff member filed a whistle-blower complaint charging Mr. Carson's wife, Candy Carson, with pressuring department officials to find money for the expensive redecoration of his offices, even if it meant circumventing the law.

... About a month before it was ordered, Helen G. Foster, a former top HUD official, filed a complaint with the Office of Special Counsel, a federal whistle-blower agency, claiming that she had been demoted and transferred after resisting Mrs. Carson's attempts to get around the \$5,000 redecoration law.

<https://www.nytimes.com/2018/02/27/us/ben-carson-hud-furniture.html>

Secretary Ben Carson reportedly dropped \$31,000 worth of federal funds to swap an old table in his Department of Housing and Urban Development suite with posh dining room furniture.

...

The Guardian, which first reported on Foster's missive, reported that another \$165,000 was spent on "lounge furniture" from an Indiana company at the Washington headquarters.

<http://www.nydailynews.com/news/politics/ben-carson-hud-spent-31g-lavish-dining-furniture-article-1.3845759>

WASHINGTON (AP) — When the acting head of the Department of Housing and Urban Development asked an agency official to "find money" to pay for a costly makeover of incoming Secretary Ben Carson's office, she recoiled, telling him \$5,000 was the statutory max. But that wasn't the end of the conversation, according to a complaint alleging retaliation filed with a federal whistleblower agency. ... Foster wrote that she discovered a \$10.8 million budget shortfall last year from "accounting irregularities" in 2016 and raised concerns with senior agency officials. She said she was "informed that agency leadership was unwilling to report the \$10.8 million funding deficit" to the appropriation's staff tasked with handling congressional approval for the department's funding.

<https://federalnewsradio.com/government-news/2018/02/complaint-hud-employee-demoted-over-office-makeover-request/>

Hatch Act

WASHINGTON — One minute, President Trump's 2020 campaign referred to Jared Kushner as "Senior Advisor and Assistant to the President, and President Trump's son-in-law." The next, Kushner became simply "President Trump's son-in-law."

Blame the 1939 Act to Prevent Pernicious Political Activities, better known as the Hatch Act. The law imposes limits on what government officials can and cannot do in terms of partisan campaign activities.

... As an assistant to the president, Kushner can take part in limited campaign activities while

on duty. But the Office of Special Counsel (OSC) that oversees enforcement of the Hatch Act says the law prohibits “referring to their official titles or positions while engaged in political activity at any time.”

After the original announcement went up, the campaign updated the statement. The new version reads: “Jared Kushner, President Trump’s son-in-law, said, ‘Brad was essential in bringing a disciplined technology and data-driven approach to how the 2016 campaign was run. His leadership and expertise will be help build a best-in-class campaign.’”

... Under the current president, Ben Carson was briefly in trouble after he was introduced at an August 2017 Trump campaign rally as “the secretary of the U.S. Department of Housing and Urban Development, Dr. Ben Carson.” The OSC determined that the renowned surgeon had not done anything to imply that he was speaking in his official capacity.

<https://www.yahoo.com/news/trump-campaign-nixes-kushner-title-amid-legal-questions-204834881.html>

An ethics group said Jared Kushner appears to have violated federal law by praising President Trump's new campaign manager.

Citizens for Responsibility and Ethics in Washington (CREW) tweeted Tuesday that their lawyers were looking at taking legal action against Kushner for possibly violating the Hatch Act.

... CREW appears to be suggesting in its tweet that Kushner may have broken the law by using his official White House title to endorse Parscale.

The Hatch Act "prohibits federal employees from using their official authority or influence to affect the outcome of an election."

The Hill has reached out to the White House for comment.

The Office of Special Counsel has found several members of Trump's administration in violation of the Hatch Act.

<https://www.msn.com/en-us/news/politics/watchdog-kushner-may-have-violated-hatch-act-with-campaign-statement/ar-BBJFP8g>

General News

(CNN) In September, women gun owners and enthusiasts from the National Rifle Association headed to a plush Four Seasons resort in Texas for an annual retreat and clay shooting at the Dallas Gun Club with one of the weekend's headliners: Interior Secretary Ryan Zinke.

The Trump Cabinet is traveling in style. Thanks, taxpayers!

Zinke went to target practice with the women, posting about their marksmanship on Twitter -- #GalsWithGuns -- as part of his two-night stay. He also stopped at a posh office park in Dallas to meet with a small group that included wealthy Republican donors who raised money for Trump's presidential campaign. The meeting appears on the secretary's official schedule as an informal luncheon with community leaders focused on sporting and conservation.

Zinke's choice to meet with donors in the midst of official business is one of several travel decisions during his first year as secretary that have some critics questioning his priorities, even if they don't necessarily violate agency rules. Zinke's travel habits have already spawned two investigations, including one looking into whether his activities are in violation of the Hatch Act, which limits the political activity of federal employees.

... His travel as secretary is currently the subject of two government reviews. The Office of Special Counsel has a Hatch Act investigation into Zinke's meeting with the Vegas Golden Knights, a hockey team owned by someone Zinke called "a major donor" in his 2014 congressional campaign. Interior's inspector general also announced in October that it is investigating his travel practices, including a charter flight he took after meeting with the

hockey team and traveling to Montana.

<https://www.cnn.com/2018/02/27/politics/ryan-zinke-nra/index.html>

The Department of Energy (DOE) appears to have reimbursed one of its contractors millions of dollars for legal expenses from fighting whistleblower retaliation claims, a pair of Senate Democrats say.

Sens. Claire McCaskill (Mo.) and Ron Wyden (Ore.) asked about the situation in a Tuesday letter to Energy Secretary Rick Perry, citing documents that appear to show that the National Nuclear Security Administration (NNSA) paid more than \$24 million to the partnership of Lawrence Livermore National Laboratory for costs from a series of whistleblower cases.

Rules generally prohibit contractors from recovering such costs from federal agencies.

“Whistleblowers are an invaluable resource for weeding out waste, fraud and abuse — the last thing the government should be doing is paying the legal fees of contractors who’ve retaliated against whistleblowers,” McCaskill, the top Democrat on the Senate Homeland Security and Governmental Affairs Committee, said in a statement.

<http://thehill.com/policy/energy-environment/375886-senators-say-doe-may-have-reimbursed-contractor-for-fighting>

The embattled head of the Veterans Affairs Department on Tuesday shook off any indication that he might step down from his post in the wake of a scandal regarding his travel last year, saying he was setting the direction for the agency and everyone should either get on board or find another place to work.

Reforms and changes at VA are moving forward and that progress will continue, Secretary David Shulkin said after addressing the American Legion’s Commander’s Call conference.

Other people throughout the department are reconsidering their roles and their future there, he said, but Shulkin himself has no plans to resign his post. Shulkin came under fire recently when an inspector general’s report found the secretary had improperly accepted gifts and used government funds while traveling in Europe last year on official business.

“I have very little tolerance for people who aren’t willing to focus on moving forward and that’s exactly what we’re going to do,” Shulkin said. “I’ve made it clear that there’s only one agenda in the department and that is to get back on track and anybody who doesn’t want to do that shouldn’t be in the VA.”

http://www.govexec.com/management/2018/02/scandal-plagued-va-secretary-vows-rid-department-adversaries-who-dont-belong/146259/?oref=govexec_today_nl

WASHINGTON — Veterans Affairs Secretary David Shulkin insists the drama at his department is now in the past.

“I think things are clear,” he told reporters Tuesday. “I’m the secretary. I set the agenda.

“I’ve made it clear that there is only one agenda in the department, and that is to get back on track.”

The comments came following his speech to the American Legion’s winter conference, during which the embattled secretary made no mention of a damning inspector general report earlier this month accusing him of ethics violations or the subsequent power struggle within his department that elicited accusations of email hacking and staff subversion.

Since then, White House officials have held a series of high-level meetings with VA officials and veterans groups in an effort to stabilize the department.

Shulkin said last week he received assurances from Chief of Staff John Kelly that his job is safe and that he would be given the authority he needs to run the department. On Monday, Kelly met with a several veterans groups to respond to concerns about Shulkin’s handling of the controversies and the ensuing internal strife at the massive bureaucracy.

https://www.federaltimes.com/veterans/2018/02/27/embattled-va-secretary-insists-hes-in-charge-and-moving-past-controversies/?utm_source=Sailthru&utm_medium=email&utm_campaign=Fed%20DB%2002-27-18&utm_term=Editorial%20-%20Daily%20Brief

Jill Gerber
Communications Director
U.S. Office of Special Counsel

(b)(7)(C)-(b)(6)(d)



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From: [Lopez, Louis](#)
To: [Gerber, Jill](#); [Hardin, Jessica](#); [Hartobey, Patrick](#); [Kerner, Henry](#); [Leavitt, Tristan](#); [Millsaps, Travis](#)
Cc: [Fong, Bruce](#); [Wagner, Anne M.](#)
Subject: (b)(7)(C);(b)(6);(b)(5)
Date: Wednesday, November 22, 2017 8:57:19 AM
Attachments: (b)(7)(C);(b)(6);(b)(5)

Henry-

As you requested, attached are the Significant Case Activity Reports (SCARs) for the units that I supervise: IPD-HQ, RDU, HAU, and USERRA. Please let me know if you have any questions about the SCARs.

Thanks, and have a great Thanksgiving holiday!

Louis Lopez

Associate Special Counsel

U.S. Office of Special Counsel

Safeguarding Employee Rights, Holding Government Accountable



From: [Kerner, Henry](#)
To: [Gerber, Jill](#); [Leavitt, Tristan](#); [Hartobey, Patrick](#); [Millsaps, Travis](#)
Subject: RE: Playbook email list
Date: Tuesday, November 21, 2017 3:25:00 PM

Looks great to me, Jill!

From: Gerber, Jill
Sent: Tuesday, November 21, 2017 2:05 PM
To: Kerner, Henry [\(b\)\(7\)\(C\);\(b\)\(6\);\(b\)\(5\)](#); Leavitt, Tristan [\(b\)\(7\)\(C\);\(b\)\(6\);\(b\)\(5\)](#); Hartobey, Patrick [\(b\)\(7\)\(C\);\(b\)\(6\);\(b\)\(5\)](#); Millsaps, Travis [\(b\)\(7\)\(C\);\(b\)\(6\);\(b\)\(5\)](#)
Subject: FW: Playbook email list

[\(b\)\(7\)\(C\);\(b\)\(6\);\(b\)\(5\)](#)

TRANSITIONS -- Jacqueline Boggess has joined Strategic Partners & Media as a media strategist. She was previously creative director at D.C. London. **Arpit Patel** has also joined the firm as a digital media planner and **Baker Landon** as interactive content coordinator. ... **Jill Gerber** has started as communications director for the U.S. Office of Special Counsel. She previously worked for Sen. Chuck Grassley (R-Iowa). ... **Layle Nelson** has joined CRAFT as the company's senior vice president of public affairs. She was previously SVP at APCO Worldwide.

<https://www.politico.com/newsletters/playbook-power-briefing>

From: Gerber, Jill
Sent: Monday, November 20, 2017 12:24 PM
To: 'Daniel Lippman' [\(b\)\(7\)\(C\);\(b\)\(6\);\(b\)\(5\)@politico.com](#)>
Subject: RE: Playbook email list

Sure thing, Daniel. If you know when the item might appear, I'd be interested to know. Thank you again.

From: Daniel Lippman [\(b\)\(7\)\(C\);\(b\)\(6\);\(b\)\(5\)@politico.com](#)
Sent: Monday, November 20, 2017 12:23 PM
To: Gerber, Jill [\(b\)\(7\)\(C\);\(b\)\(6\);\(b\)\(5\)](#)
Subject: Re: Playbook email list

Thanks Jill!

From: Gerber, Jill [\(b\)\(7\)\(C\);\(b\)\(6\);\(b\)\(5\)](#)
Sent: Monday, November 20, 2017 12:19:00 PM

To: Daniel Lippman

Subject: RE: Playbook email list

Hi, Daniel – Here's a list of the new folks at the Office of Special Counsel. Henry was nominated by the President and confirmed by the Senate. Beyond us, the Office of Special Counsel has career professionals who take inquiries from federal employee whistleblowers and members of the public and work on their cases. We're here to serve and look forward to hearing from whistleblowers. Please let me know if you need anything further. Thank you and best regards. – Jill

HENRY KERNER

Special Counsel

Henry Kerner graduated from Harvard Law School and spent 18 years working as a career prosecutor in California. In 2011, he joined the staff of the House Committee on Oversight and Government Reform, the chief investigative committee of the United States House of Representatives. Under Chairman Darrell Issa, and later, Chairman Jason Chaffetz, he led investigations of the federal bureaucracy and fought on behalf of whistleblowers to protect American taxpayers. Mr. Kerner was also the staff director under Ranking Member Sen. John McCain of the Senate Permanent Subcommittee on Investigations, the lead investigative committee of the Senate. He left the Hill in early 2016 and joined Cause of Action Institute as vice president for investigations. Cause of Action is a nonpartisan oversight group committed to exposing waste, fraud and abuse in the federal government. It has worked with whistleblower and good government groups throughout the country.

TRISTAN LEAVITT

Principal Deputy Special Counsel

Tristan Leavitt began as Principal Deputy Special Counsel at OSC after working for eight years on Capitol Hill, including for the House Oversight and Government Reform Committee and the Senate Judiciary Committee. During that time, he conducted congressional investigations into matters such as the Bureau of Alcohol, Tobacco, Firearms and Explosives' Operation Fast and Furious, U.S. Citizenship and Immigration Services' EB-5 Immigrant Investor Program, and misconduct at the U.S. Secret Service and the Transportation Security Administration. He also worked with dozens of whistleblowers in these and other investigations.

While working on the Senate Judiciary Committee, Mr. Leavitt handled all whistleblower protection policy for Senator Chuck Grassley, the co-author of the False Claims Amendments Act of 1986 and the Whistleblower Protection Act of 1989. Mr. Leavitt worked on a number of bipartisan whistleblower protection bills and in 2013 shepherded the passage of the first congressional resolution designating July 30 as National Whistleblower Appreciation Day. He also spearheaded a congressional *amicus* brief in the Supreme Court case *Department of Homeland Security v. MacLean* and proposed the establishment of the Senate Whistleblower Protection Caucus, launched in early 2015. On the House Oversight Committee, Mr. Leavitt worked closely with his counterparts across the aisle to advance several pieces of whistleblower protection legislation that were signed into law, including the FBI Whistleblower Protection Enhancement Act of 2016 and the Follow the Rules Act. He also served as Chairman Jason Chaffetz's designated staff member for the new House Whistleblower Protection Caucus.

Mr. Leavitt received his B.A. from Brigham Young University and his J.D. from Georgetown University Law Center. He is a native of Idaho Falls, Idaho.

TRAVIS MILLSAPS

Director of Public Policy

Travis joins OSC from the Cause of Action Institute, a nonprofit government watchdog group. In his work at Cause of Action, Travis worked with whistleblowers and stakeholders to conduct strategic oversight of the executive branch through investigations, FOIA requests and litigation, and other administrative law accountability measures, including identifying burdensome regulations to be repealed or rescinded. During law school, Travis clerked for the Senate Homeland Security and Governmental Affairs Committee, investigating federal agencies to identify and prevent waste, fraud, and abuse in government. Travis grew up in Knoxville, Tennessee. He received a B.S. in Business Administration from the University of Tennessee and a J.D. from the George Washington University Law School.

PATRICK HARTOBEY

Director of Legislative Affairs

Patrick comes to OSC from the House Committee on Oversight and Government Reform (OGR). During his time there, Patrick worked on a variety of issues, such as oversight of the Washington Metropolitan Area Transit Authority, the District of Columbia, federal procurement and acquisition, and the 2020 Decennial Census. While in law school, Patrick clerked for OGR and the Senate Permanent Subcommittee on Investigations, working on investigations such as the IRS targeting scandal and a financial company's misuse of financial products. Patrick grew up in South River, New Jersey. He received a B.A. in Political Science from the Maxwell School at Syracuse University and a J.D. from the Emory University School of Law.

JILL GERBER

Communications Director

Jill Gerber is communications director for the Office of Special Counsel. She comes directly from the office of Senator Chuck Grassley of Iowa. She worked for Senator Grassley in a press capacity for 19 years, starting on the Special Committee on Aging under his chairmanship, then moving to the Finance Committee, where Senator Grassley was chairman and ranking member, and then to the senator's personal office. A graduate of the University of North Carolina at Chapel Hill with a journalism degree, Jill was a newspaper reporter in South Carolina for five years after college before coming to the nation's capital to work as a press secretary.

Here's a brief description of what OSC does:

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Our basic authorities come from four federal statutes: The Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services

Employment & Reemployment Rights Act (USERRA). OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing, and to serve as a safe channel for allegations of wrongdoing. For more information, please visit our website at www.osc.gov.

From: Daniel Lippman <(b)(7)(C):(b)(6):(b)(5)@politico.com>

Sent: Sunday, November 19, 2017 5:58 PM

To: Gerber, Jill <(b)(7)(C):(b)(6):(b)(5)>

Subject: Re: Playbook email list

Thanks!

Sent from my iPhone

On Nov 19, 2017, at 5:57 PM, Gerber, Jill <(b)(7)(C):(b)(6):(b)(5)> wrote:

Thank you. Sure. I'd love to offer the details of my new colleagues for the item. I'll do that tomorrow. I'm so impressed with the career professionals at the agency. I'd love to give them a shout-out, too.

On Nov 19, 2017, at 7:25 AM, Daniel Lippman <(b)(7)(C):(b)(6):(b)(5)@politico.com> wrote:

Thank you! congrats! Can we do an item in Politico on your new job?

From: Gerber, Jill <(b)(7)(C):(b)(6):(b)(5)>

Sent: Saturday, November 18, 2017 6:11:47 PM

To: Daniel Lippman

Subject: Re: Playbook email list

Thank you so much, Daniel. I'm doing press at the Office of Special Counsel (the agency, not the Mueller operation. Glad to update my access, thank you.

Sent from my iPhone

On Nov 18, 2017, at 10:07 AM, Daniel Lippman

<(b)(7)(C):(b)(6):(b)(5)@politico.com> wrote:

Hey Jill,

Since you can't access your old work email anymore, I switched your Playbook subscription to your new work email -- let me know if that's okay or if you want any

other Politico newsletters: www.politico.com/tipsheets/

What's your next career move?

Many thanks, Daniel Lippman – Politico

From: Daniel Lippman

Sent: Tuesday, November 14, 2017 7:00 AM

To: Daniel Lippman

Subject: Fw: Playbook Power Briefing, presented by Chevron: MCCONNELL says he believes Moore's accusers and that he should step aside -- ALEX AZAR named next HHS secretary nominee -- RAND PAUL returns to Washington

From: Gerber, Jill (Grassley)

To: (b)(7)(C);(b)(6) <[grassley.senate.gov](mailto:(b)(7)(C);(b)(6)@grassley.senate.gov)>

Sent: Monday, November 13, 2017 1:04 PM

To: POLITICO Playbook

Subject: Automatic reply: Playbook Power Briefing, presented by Chevron: MCCONNELL says he believes Moore's accusers and that he should step aside -- ALEX AZAR named next HHS secretary nominee -- RAND PAUL returns to Washington

I'm no longer with the Grassley office. I've left for another opportunity. Please contact Michael Zona at

(b)(7)(C);(b)(6);(b) <[grassley.senate.gov](mailto:(b)(7)(C);(b)(6);(b)@grassley.senate.gov)> or 202/224-2424

Thank you.

From: [Lopez, Louis](#)
To: [Kerner, Henry](#); [Leavitt, Tristan](#)
Cc: [Lopez, Louis](#)
Subject: (b)(7)(C);(b)(6);(b)(5)
Date: Tuesday, November 21, 2017 9:02:02 AM
Attachments: (b)(7)(C);(b)(6);(b)(5)

Henry and Tristan-

Attached is the (b)(7)(C);(b)(6);(b)(5) I figured it might be helpful for our meeting later today.

(b)(7)(C);(b)(6);(b)(5)

Thanks!

-Louis

From: Kerner, Henry

Subject: (b)(7)(C);(b)(6);(b)(5)

Date: Wednesday, April 18, 2018 5:22:59 PM

Attachments: (b)(7)(C);(b)(6);(b)(5)



U.S. OFFICE OF SPECIAL COUNSEL

Report of Prohibited Political Activity under the Hatch Act OSC File No. HA-18-0966 (Kellyanne Conway)

March 6, 2018

This report represents the deliberative attorney work product of the U.S. Office of Special Counsel (OSC) and is considered privileged and confidential. Any release of information beyond persons specifically designated by OSC to have access to its contents is prohibited. All Freedom of Information Act (FOIA) inquiries regarding this report should be referred to OSC's FOIA Officer at (202) 804-7000.

I. INTRODUCTION

The U.S. Office of Special Counsel (OSC) received complaints in November and December 2017 alleging that Counselor to the President Kellyanne Conway violated the Hatch Act by engaging in political activity while participating in official interviews with Fox News's *Fox & Friends* and CNN's *New Day*. Specifically, the complaints alleged that during these interviews—which Ms. Conway conducted in her official capacity—she improperly advocated for the defeat of Democrat Doug Jones or expressed support for Republican Roy Moore, both of whom were candidates in the December 2017 Alabama special election for U.S. Senate. OSC consolidated the complaints, opened OSC File No. HA-18-0966, and investigated the allegations. This report contains the investigative findings in this matter. In summary, OSC finds that Ms. Conway violated the Hatch Act on two separate occasions and refers the violations to the President for the imposition of appropriate discipline.

II. FACTUAL FINDINGS

Ms. Conway is a commissioned officer in the White House Office serving as Counselor to the President. She has held this position since January 20, 2017.

A. **On November 20, 2017, Ms. Conway appeared in her official capacity on Fox News's *Fox & Friends* and discussed why voters should not support Democrat Doug Jones in the Alabama special election for U.S. Senate.**

On November 19, 2017, *Fox & Friends* requested an interview of Ms. Conway to discuss four topics: tax reform, media coverage of the President's accomplishments, comments by a college basketball player's father, and statements by former Presidential candidate Hillary Clinton. Later that day, the White House Communications Office prepared and provided to Ms. Conway a written official communications briefing. The document included, among other things, talking points about Roy Moore, Al Franken, and sexual misconduct. Specifically, the talking points on Roy Moore were: (1) "Let the people of Alabama decide. I know the people of Alabama they are great - and will do the right thing;" (2) "The President believes these allegations are troubling and if these allegations are true, Judge Moore should step aside;" and (3) "The people of the state of Alabama will make this decision." The communications briefing did not include any reference to Moore's opponent, Doug Jones.

The following morning, *Fox & Friends* remotely interviewed Ms. Conway for approximately 11 minutes.¹ During the interview, Ms. Conway stood on the White House grounds, and the White House was visible in the background. Host Steve Doocy introduced Ms. Conway by stating, "[l]et's talk to Kellyanne Conway. She's Counselor to the President of the United States." The chyron at the bottom of the interview periodically identified Ms. Conway as "Counselor to President Trump."

¹ Video of the November 20, 2017, *Fox & Friends* interview may be found at the following link: <http://insider.foxnews.com/2017/11/20/kellyanne-conway-roy-moore-vote-doug-jones-alabama-vote-against-tax-cuts>.

The interview began with a conversation on tax reform. Ms. Conway discussed, among other things, the President's four core principles for tax cuts and tax relief. When discussing the Administration's tax reform efforts, Mr. Doocy remarked that "[p]artisan politics is getting in the way, and Democrats do not want to give the President a win." In response, Ms. Conway argued that the Administration's tax plan was "a win for the American people," contended that Democrats in opposition were "in big trouble," and then volunteered a comment about Doug Jones and the Alabama special election:

And Doug Jones in Alabama. Folks don't be fooled. He'll be a vote against tax cuts. He's weak on crime, weak on borders. He's strong on raising your taxes. He's terrible for property owners And Doug Jones is a doctrinaire liberal, which is why he's not saying anything and why the media are trying to boost him.

As Ms. Conway was speaking, host Brian Kilmeade asked several times, "[s]o vote Roy Moore?" Ms. Conway responded saying, "I'm telling you that we want the votes in-- in-- in the Senate to get this tax-- this tax bill through Let me tell you something this guy Doug Jones is a doctrinaire liberal." The *Fox & Friends* hosts then asked about the Republican organizations and individuals withdrawing support for Roy Moore. Ms. Conway replied, "[r]ight, and, you know what-- the-- I just want everybody to know Doug Jones, nobody ever says his name and they pretend that he's some kind of conservative Democrat in Alabama and he's not." After a final question about the President's support of Roy Moore, the interview returned to tax reform and other issues.

B. On December 6, 2017, Ms. Conway appeared in her official capacity on CNN's *New Day* and discussed why voters should support Republican Roy Moore, and not support Democrat Doug Jones, in the Alabama special election for U.S. Senate.

On December 5, 2017, *New Day* requested an interview of Ms. Conway to discuss the following topics: tax reform, the Special Counsel investigation, the President's and the Republican National Committee's support for Roy Moore, and a potential government shutdown. Later that day, the White House Communications Office prepared and provided to Ms. Conway a written official communications briefing. The document included a talking point about a telephone conversation between the President and Roy Moore, "during which they discussed the state of the Alabama Senate race and the President endorsed Judge Moore's campaign."

The following day, *New Day* remotely interviewed Ms. Conway for approximately 20 minutes.² During the interview, Ms. Conway stood on the White House grounds, and the White House was visible in the background. Host Christopher Cuomo introduced Ms. Conway by stating, "[t]he White House is defending President Trump's endorsement of controversial Senate candidate Roy Moore Joining us now with her take on that and other news items, Counselor

² Video of the December 6, 2017, *New Day* interview may be found at the following link: <https://www.youtube.com/watch?v=DvXBQZqhTaU>.

to President Trump Kellyanne Conway.” The chyron at the bottom of the interview periodically identified Ms. Conway as “Counselor to President Trump.”

Mr. Cuomo first asked Ms. Conway about the President’s endorsement of Roy Moore. In response, Ms. Conway discussed the President’s initial endorsement of former candidate Luther Strange and then stated:

When the President endorsed Roy Moore -- when he started to talk about Doug Jones, the opponent here which you still don’t want to talk about but the President does, Roy Moore took a lead in the polls again. Why is that? Because the President, himself, came out and said he doesn’t want a liberal in the Senate. He doesn’t want a liberal Democrat in the Senate. He wants a reliable vote for taxes, for life--

Ms. Conway then introduced into the discussion Al Franken’s sexual misconduct and the hypocrisy that she sees among commentators and indicated that the people of each state should decide. The following exchange occurred:

CUOMO: If you want to leave it up to the voters of Alabama, then stay out of it. You don’t vote in Alabama.

CONWAY: Oh, oh, OK, and, and does that mean that Chuck Schumer and Nancy Pelosi don’t want Doug Jones to win? The President has been so explicitly clear on this so let me repeat it again for everyone who wants this to be as it’s not and everyone who’s really disappointed that they couldn’t tilt this race the other way by having people living in Alabama instead of covering what’s going on in the rest of the country. Do you know everything that’s going on in this country? The historic tax cuts for individuals and businesses, but we have people planted in Alabama on one single Senate race. You’re telling the President of the United States not to get involved in a race and the media--

Ms. Conway followed these remarks by stating, “[t]he President has said he wants a vote. He’s also said he doesn’t want a liberal Democrat in the Senate. Nobody was even talking about Doug Jones until the President started talking about him.”

As the interview continued, Ms. Conway repeated the President’s position on the Alabama special election. For instance, Ms. Conway stated that “the only endorsement that matters in this race is President Trump’s ...” And when referring to the President’s position, she stated that Doug Jones will be a reliable vote “for tax hikes,” “against border security,” “against national security,” “against the Second Amendment,” and “against life.” Further, she stated that Doug Jones is “out of step for Alabama voters, according to the President” and “a liberal Democrat, the President has said ... and he doesn’t want a liberal Democrat representing Alabama in the United States Senate.” The conversation transitioned into the President’s relationship with Mitt Romney and then returned to the Alabama special election. Ms. Conway

again reiterated that the President “is against Doug Jones,” “[d]oes not want a liberal Democrat to represent Alabama,” and “has said that he wants Roy Moore in the United States Senate.”

Mr. Cuomo then asked Ms. Conway, “[a]nd you feel good with that? You feel good with Roy Moore as a reflection of your party?” After Ms. Conway responded that her “feelings don’t matter,” Mr. Cuomo said “[o]h yes they do. You are Counselor to the President of the United States.” Ms. Conway then remarked “[a]nytime I express a feeling about a candidate, people who want to make themselves relevant get air time and Twitter time, so I won’t go there.” Speaking over Ms. Conway’s statement, Mr. Cuomo stated that she has “got to be careful about the Hatch Act.” Ms. Conway continued, stating: “They’re going to have to find something ... relevant and important to do today to make themselves feel better.” Mr. Cuomo then stated, “[y]ou have to be careful about observing the rules of ethics there” And Ms. Conway said, “[l]et me tell you what I feel good about That Donald Trump’s the President of the United States. That Mike Pence is the Vice President of the United States.”

The interview returned to a discussion on tax reform and transitioned to the President’s relationships with both Mitt Romney and Steve Bannon. After discussing Steve Bannon’s initial endorsement of Roy Moore, Ms. Conway said the following:

[T]he only endorsement that’s mattered in the Alabama race ... is the President’s because after he came out against Doug Jones-- and none of you seem to want to say those nine letters, Doug Jones, that God forbid people find out who he is and who he would be in the Senate, so the President had to go out and do it for you. Thank you, Mr. President

Mr. Cuomo and Ms. Conway then reviewed various actions taken by the Democratic and Republican parties in 2017. Ms. Conway also discussed President Trump’s position on moving the U.S. Embassy in Israel from Tel Aviv to Jerusalem before concluding the interview.

C. Ms. Conway has significant knowledge of the Hatch Act.

The Office of White House Counsel provided Hatch Act guidance to Ms. Conway in a formal ethics training session, during individual conversations, and in multiple written communications. More specifically, on January 24, 2017, Ms. Conway attended a senior staff ethics training led by White House Counsel Donald McGahn and Deputy Counsel to the President Stefan Passantino. The training included a discussion of the Hatch Act’s definition of political activity as “[a]ny activity directed toward the success or failure or [sic] a political party, candidate for partisan political office, or partisan political organization.”

Subsequently, on March 1, 2017, Mr. Passantino met individually with Ms. Conway to provide specialized Hatch Act training and review a PowerPoint presentation about the Hatch Act provided by OSC earlier in February 2017. One of the topics discussed was the Hatch Act’s prohibition against using one’s official authority or influence for the purpose of interfering with or affecting the result of an election.

On April 20, 2017, the Office of White House Counsel sent by email to Ms. Conway and other White House Office employees a memorandum entitled “Political Activities and Interactions with Partisan Political Organizations,” which discussed the Hatch Act and identified the use of official authority prohibition as a “certain important restriction[.]” The next day, Mr. Passantino and Senior Associate Counsel to the President Scott Gast met individually with Ms. Conway to provide specialized Hatch Act training and again reviewed the above-referenced PowerPoint presentation provided by OSC.

On June 28, 2017, Ms. Conway received a copy of the White House Staff Manual, which included a section entitled “Political Activities” that discussed the Hatch Act. Also, the Office of White House Counsel often provided Hatch Act guidance to Ms. Conway when she received requests to appear at political events. This guidance again warned against the use of one’s official title or position when participating in political events.

Then, on November 20, 2017, after the *Fox & Friends* interview, the Office of White House Counsel contacted Ms. Conway due to the Hatch Act concerns raised by her interview and again provided her with Hatch Act guidance. And lastly, on December 4, 2017, the Office of White House Counsel sent by email to Ms. Conway and other White House Office employees a Hatch Act reminder regarding the “Use of Official Resources and Official Social Media Accounts,” which included the following information about the Hatch Act’s use of official authority prohibition:

You may not use your official position to affect the result of an election. You may not, for example, use your official title when participating in any political activities, nor may you use your official authority to encourage or coerce anyone (including subordinates) to engage in or refrain from engaging in political activity. This includes through use of official social media accounts. [emphasis in original]

D. Ms. Conway had an opportunity to respond to the Hatch Act allegations during OSC’s investigation.

On January 25, 2018, OSC propounded interrogatories to Ms. Conway and requested her response by February 1, 2018. Having received no response, OSC emailed Mr. Passantino on February 7, 2018, stating that it would assume Ms. Conway did not intend to respond if it received no communication by February 12, 2018. On February 12, 2018, Mr. Passantino confirmed that Ms. Conway intended to respond and would do so in the “near future.” OSC granted Ms. Conway an extension until February 16, 2018. As of the date of this report, OSC has not received Ms. Conway’s response. In addition, OSC provided Ms. Conway an opportunity to respond to the completed report, but has received no such response to date.

Notwithstanding Ms. Conway’s silence, in a response to OSC’s request for information, the Office of White House Counsel provided brief explanations for Ms. Conway’s statements during the interviews on *Fox & Friends* and *New Day*. Specifically, it contended that Ms. Conway’s words “must be viewed through the prism of one whose job function was to provide

commentary concerning the President's newsworthy reasoning for his position with respect to a nominee within his party, as well as the impact of the special election on his agenda." With respect to the *Fox & Friends* interview, the Office of White House Counsel asserted that Ms. Conway "intended these remarks to serve as policy commentary in the context of a broader discussion of the prospects of the President's agenda in Congress, not as advocacy for or against a candidate." And it stated that during the *New Day* interview, "Ms. Conway sought to articulate, without engaging in any advocacy, why the President's posture with respect to [Roy Moore] had changed."

III. LEGAL ANALYSIS

A. Ms. Conway is subject to the Hatch Act.

The Hatch Act restricts the political activity of "any individual, other than the President and the Vice President, employed or holding office in ... an Executive agency other than the Government Accountability Office." 5 U.S.C. § 7322(1). The White House Office is a component of the Executive Office of the President, which is considered an Executive agency for purposes of the Hatch Act.³ Therefore, Ms. Conway, a presidential appointee employed by the White House Office, is subject to the Hatch Act.

B. Ms. Conway violated the Hatch Act's prohibition against using one's official authority or influence for the purpose of interfering with or affecting the result of an election.

The Hatch Act prohibits federal employees from using their official authority or influence for the purpose of interfering with or affecting the result of an election. 5 U.S.C. § 7323(a)(1). The attendant Hatch Act regulation gives examples of the type of activity this prohibition encompasses. For example, it is a prohibited use of official authority for employees to use their official title or position while participating in political activity. *See* 5 C.F.R. § 734.302(b)(1). Political activity is defined as activity directed at the success or failure of a political party, partisan political group, or candidate for partisan political office. 5 C.F.R. § 734.101. Thus, federal employees in their official capacity are prohibited from, among other things, promoting the election or defeat of candidates for partisan political office.

1. Ms. Conway violated the Hatch Act during her November 20, 2017, interview on Fox News's *Fox & Friends*.

The White House Communications Office arranged Ms. Conway's *Fox & Friends* interview and provided her with a written communications briefing containing official talking points. When *Fox & Friends* interviewed Ms. Conway, she was introduced as Counselor to the President, the White House appeared in the background, the chyron at the bottom of the

³ *See* 19 U.S. Op. Off. Legal Counsel 103 (May 5, 1995), 1995 WL 1767065 (concluding that for Hatch Act purposes, the White House Office is an Executive agency); 27 U.S. Op. Off. Legal Counsel 118 (May 23, 2003), 2003 WL 25728359 (reaffirming conclusion that the Hatch Act applies to employees of the White House Office).

interview periodically identified Ms. Conway as “Counselor to President Trump,” and she spoke for the first two and half minutes about tax reform and the Administration’s efforts on that issue. Given the official arrangement of the interview, the use of her official title, the discussion of official topics, and her standing in front of the White House during the interview, it is clear Ms. Conway gave the interview in her official capacity as Counselor to the President.

Prior to the *Fox & Friends* interview, Ms. Conway received regular and repeated Hatch Act training and guidance. As such, it is inexplicable why, when asked a question about tax reform and Democratic opposition, Ms. Conway chose to answer as follows:

And Doug Jones in Alabama. Folks don’t be fooled. He’ll be a vote against tax cuts. He’s weak on crime, weak on borders. He’s strong on raising your taxes. He’s terrible for property owners And Doug Jones is a doctrinaire liberal, which is why he’s not saying anything and why the media are trying to boost him.

Afterward when one of the *Fox & Friends* host asked, “[s]o vote Roy Moore?,” Ms. Conway responded, “I’m telling you that we want the votes in -- in -- in the Senate to get this tax bill through Let me tell you something this guy Doug Jones is a doctrinaire liberal.”

Ms. Conway’s introduction of Doug Jones into the interview was unprompted, unresponsive to the question asked by the *Fox & Friends* host, and surprising given that she knew the four identified interview topics did not include Doug Jones, Roy Moore, or the Alabama special election. Her intentional partisan jabs against Doug Jones were made in her official capacity and meant to persuade voters not to support him in the Alabama special election. By telling voters not to “be fooled” and contending that Doug Jones would be “terrible for property owners,” Ms. Conway advocated for the failure of his candidacy. She also implied that voters should support Roy Moore, so the President could get the votes in the Senate needed to pass tax reform. Her advocacy against one candidate and implied endorsement of another candidate constituted political activity under the Hatch Act. Because Ms. Conway engaged in political activity while acting in her official capacity as Counselor to the President, she violated the Hatch Act’s prohibition against using one’s official authority or influence for the purpose of interfering with or affecting the result of an election.

2. Ms. Conway violated the Hatch Act during her December 6, 2017, interview on CNN’s *New Day*.

As with the *Fox & Friends* interview, the White House Communications Office arranged Ms. Conway’s *New Day* interview and provided her with a written communications briefing containing official talking points. At the beginning of the interview, Ms. Conway was introduced as “Counselor to President Trump, Kellyanne Conway,” and the chyron at the bottom of the interview periodically identified her with this title. Throughout the interview, Ms. Conway stood on the White House grounds, and the White House appeared in the background. Given the official arrangement of the interview, the use of her official title, the discussion of official topics, and her standing in front of the White House during the interview, Ms. Conway gave the *New Day* interview in her official capacity as Counselor to the President.

Unlike the previous interview on *Fox & Friends*, *New Day* requested that Ms. Conway discuss Roy Moore, and the official communications briefing she received included a talking point that included the President's endorsement of Roy Moore. The communications briefing, however, did not mention Doug Jones or the reasons why voters should not support him. Nonetheless, during the *New Day* interview Ms. Conway repeatedly described Doug Jones as a liberal Democrat and gave reasons why voters should not support him in the Alabama special election.

In contrast with the previous interview on *Fox & Friends*, however, Ms. Conway attributed many of her comments on *New Day* about Doug Jones and Roy Moore to the President. For instance, while discussing why Roy Moore "took a lead in the polls," Ms. Conway stated: "Why is that? Because the President, himself, came out and said he doesn't want a liberal in the Senate. He doesn't want a liberal Democrat in the Senate. He wants a reliable vote for taxes, for life" Ms. Conway repeated the President's position later in the interview by stating that Doug Jones will be a reliable vote "for tax hikes," "against border security," "against national security," "against the Second Amendment," "against life," and that Doug Jones "is out of step for Alabama voters, according to the President." Later in the interview she reiterated that Doug Jones is "a liberal Democrat... and [the President] doesn't want a liberal Democrat representing Alabama in the United States Senate."

During the investigation of this matter, OSC learned that Ms. Conway received Hatch Act guidance on two occasions between the *Fox & Friends* and *New Day* interviews. First, the Office of White House Counsel met with Ms. Conway after her *Fox & Friends* interview on November 20, 2017, to discuss specific concerns raised by the interview and provided Hatch Act guidance. Second, on December 4, 2017, the Office of White House Counsel sent by email to Ms. Conway and other White House Office employees a Hatch Act reminder, which expressly warned against the use of one's official position to interfere with an election and the use of one's official title while participating in any political activity.

Although Ms. Conway's statements about the candidates in the Alabama special election during her *New Day* interview were portrayed as the President's position, she was still providing voters with reasons to vote for Roy Moore and against Doug Jones. Indeed, framing her responses to reflect the President's position arguably served as an additional and more persuasive reason for voters to support Roy Moore and not Doug Jones. Therefore, her statements advocating for the defeat of Doug Jones and the election of Roy Moore constituted political activity under the Hatch Act. Because Ms. Conway engaged in political activity while acting in her official capacity as Counselor to the President, she violated the Hatch Act's prohibition against using one's official authority or influence for the purpose of interfering with or affecting the result of an election.

* * *

As previously mentioned, the Office of White House Counsel—in a response to OSC's request for information—provided brief explanations for Ms. Conway's statements during the

Fox & Friends and *New Day* interviews. It took the position that, during these interviews, Ms. Conway provided policy commentary about the “prospects of the President’s agenda in Congress” and “sought to articulate, without engaging in any advocacy, why the President’s posture with respect to [Roy Moore] had changed.” This position, however, lacks merit. Indeed, adopting it would render meaningless the Hatch Act’s prohibition against using one’s official authority or influence for the purpose of interfering with or affecting the result of an election. Federal employees in their official capacity would be free to express electoral preferences and claim immunity from the Hatch Act by hiding behind the President’s statements about candidates and declaring they were merely carrying out their official duties in support of the Administration’s agenda. In any event, Ms. Conway’s statements, made in her official capacity, went beyond providing “commentary” on the Administration’s policies, and thus constituted political activity.

While the President is exempt from the Hatch Act, his exemption does not extend to any other employee, including those employed in the White House Office. OSC understands that Ms. Conway’s job duties may include publicly reinforcing the Administration’s positions on a host of policy issues. And the Hatch Act does not prohibit Ms. Conway from doing so, provided she carries out her job duties in a manner that complies with the law. Here, after receiving substantial Hatch Act guidance, Ms. Conway, in her official capacity, attempted to influence the Alabama special election by advocating for the success and failure of candidates in that race. In doing so, Ms. Conway violated the Hatch Act on two separate occasions.

IV. CONCLUSION

While the Hatch Act allows federal employees to express their views about candidates and political issues as private citizens, it restricts employees from using their official government positions for partisan political purposes, including by trying to influence partisan elections. In passing this law, Congress intended to promote public confidence in the Executive branch by ensuring the federal government is working for all Americans without regard to their political views. Ms. Conway’s statements during the *Fox & Friends* and *New Day* interviews impermissibly mixed official government business with political views about candidates in the Alabama special election for U.S. Senate.

The U.S. Constitution confers on the President authority to appoint senior officers of the United States, such as Ms. Conway. Considering the President’s constitutional authority, the proper course of action, in the case of violations of the Hatch Act by such officers, is to refer the violations to the President. Pursuant to 5 U.S.C. § 1215(b), OSC offered Ms. Conway an opportunity to respond to this report but did not receive a response. OSC hereby submits this Report of Prohibited Political Activity to the President for appropriate disciplinary action. *See* 5 U.S.C. § 1215(b).



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

The Special Counsel

March 6, 2018

The President
The White House
Washington, D.C. 20500

Re: OSC File No. HA-18-0966

Dear Mr. President:

Pursuant to 5 U.S.C. § 1215(b), I am forwarding to you the investigative findings of the U.S. Office of Special Counsel (OSC) regarding complaints alleging prohibited political activity by Counselor to the President Kellyanne Conway.

As explained in the accompanying report, OSC concluded that Ms. Conway violated the Hatch Act on two occasions by advocating for and against candidates in the December 2017 Alabama special election for United States Senate. Ms. Conway gave media interviews in her official capacity on November 20 and December 6, 2017. During both interviews, she impermissibly mixed official government business with political views about candidates in the Alabama special election. The Hatch Act prohibits federal employees from using their official authority or influence for the purpose of interfering with or affecting the outcome of an election. While federal employees may express their views about candidates as private citizens, the Hatch Act restricts employees from using their official government positions for partisan political purposes, including by influencing partisan elections. Ms. Conway was aware of the Hatch Act's prohibitions when she chose during both interviews to repeatedly identify reasons why voters should support one candidate over another in the Alabama special election. Thus, I refer her violations for your consideration of appropriate disciplinary action.

Respectfully,

Henry J. Kerner

Enclosures



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, N.W., Suite 218
Washington, D.C. 20036-4505
202-254-3600

February 7, 2017

Guidance on President Trump's Status as a Candidate and Its Effect on Activity in the Federal Workplace

The U.S. Office of Special Counsel (OSC) has received numerous questions from federal employees regarding President Donald Trump's status as a candidate in the 2020 Presidential election and, in particular, its impact on the Hatch Act's prohibition against engaging in political activity while on duty or in the workplace. For purposes of the Hatch Act, political activity is defined as activity directed at the success or failure of a political party, partisan political group, or candidate for partisan political office. In the past, OSC has advised that an incumbent President is considered a "candidate" for purposes of this prohibition when he officially announces his candidacy for reelection.

OSC understands that, while not an official declaration of candidacy, President Trump has filed paperwork with the Federal Election Commission establishing that he is a candidate in the 2020 Presidential election. Because the 2020 election is still more than three years away, at this time not all expressions of support or opposition to President Trump constitute political activity for purposes of the Hatch Act. For example, the Hatch Act does not prohibit federal employees, either on duty or off duty, from wearing or displaying pictures of President Trump or items from his 2016 campaign, or expressing their approval or disapproval of President Trump or his Administration, policies, or actions. However, the Hatch Act does prohibit federal employees, while on duty or in the workplace, from expressly advocating for or against his reelection in 2020. For example, federal employees may not display signs in their office that read "Reelect Trump in 2020" or express on social media or via email, "Defeat Trump in 2020," while on duty or in the workplace.

As with past Presidents running for reelection, once President Trump officially announces that he is a candidate in the 2020 election, the Hatch Act will prohibit federal employees while on duty or in the workplace from, for example, wearing or displaying pictures¹ or other items, or engaging in communications, that are directed at the success or failure of his candidacy. This prohibition is broad and encompasses more than displays or communications that expressly advocate for or against President Trump's reelection.

¹ See <https://osc.gov/Resources/2011-04-05%20FAQ%20Re%20Presidential%20photographs%20and%20candidacy%20for%20reelection.pdf>

United States Senate

WASHINGTON, DC 20510-0803

March 19, 2018

The Honorable Henry Kerner
Special Counsel
U.S. Office of Special Counsel
1730 M Street, NW
Washington, DC 20036

Dear Special Counsel Kerner:

As you know, the Hatch Act generally prohibits certain categories of political activities for all covered employees.¹ I write today to request your assistance with reviewing a recent statement made by (b)(6); (b)(7)(C)

On February 27, 2018, President Donald Trump's 2020 re-election campaign (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

and

(b)(6);

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

6
The

press release also contains a link for individuals to make financial contributions to the campaign.⁵ The campaign subsequently removed the reference to

(b)(6); (b)(7)(C)

(b)(6);

(b)(6); (b)(7)(C)

6

The Hatch Act specifically forbids an executive branch employee from "us[ing] his official authority or influence for the purpose of interfering with or affecting the result of an election."⁷ I am concerned that the use of (b)(6); (b)(7)(C) to (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) for President Trump's re-election efforts may constitute a violation of the Hatch Act. The subsequent (b)(6); (b)(6); (b)(7)(C) (b)(6);

(b)(6); (b)(7)(C) has no impact on whether (b)(6); may have violated the Act.

¹ 5 U.S.C. § 7321 *et seq.* (2015).

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

⁷ 5 U.S.C. § 7323(a)(1) (2016).

Additionally, as you are already aware from my prior letter

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

On March 6, 2017, OSC concluded that Senior Counselor to the President Kellyanne Conway violated the Hatch Act by weighing in on the Alabama special U.S. Senate election during multiple television segments in November 2017:

“While the Hatch Act allows federal employees to express their views about candidates and political issues as private citizens, it restricts employees from using their official government positions for partisan political purposes, including by trying to influence partisan elections...Ms. Conway’s statements during the *Fox & Friends* and *New Day* interviews impermissibly mixed official government business with political views about candidates in the Alabama special election for U.S. Senate.”¹⁰

These actions taken together suggest that this Administration is not taking its responsibilities under the Hatch Act seriously.

As the Special Counsel, you have authority to review potential Hatch Act violations. I request that you use the authority Congress granted you under the Hatch Act of 1939, as amended, to “receive any allegation of a prohibited personnel practice and shall investigate the allegation to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists, or is to be taken.”¹¹

(b)(6); (b)(7)(C)

¹⁰ Letter from Special Counsel Henry Kerner to President Donald Trump re: OSC File No. HA-18-0966 (Mar. 6, 2018).

¹¹ 5 U.S.C. § 1214 (2015).

I request that you review this letter and act promptly on the basis of your findings. I also ask you to report back to my staff with any recommendation for disciplinary action, if warranted. If you or members of your staff have any questions about this request, please do not hesitate to ask your staff to contact Roberto Berrios at 202-224-2441.

With best personal regards, I am

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Tom Carper". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Tom Carper
U.S. Senator

cc: The Honorable Dr. Jeff T.H. Pon
Director
U.S. Office of Personnel Management

Don McGahn
White House Counsel
Office of the White House Counsel



U.S. OFFICE OF SPECIAL COUNSEL

Report of Prohibited Political Activity under the Hatch Act OSC File No. HA-18-0966 (Kellyanne Conway)

March 6, 2018

This report represents the deliberative attorney work product of the U.S. Office of Special Counsel (OSC) and is considered privileged and confidential. Any release of information beyond persons specifically designated by OSC to have access to its contents is prohibited. All Freedom of Information Act (FOIA) inquiries regarding this report should be referred to OSC's FOIA Officer at (202) 804-7000.

I. INTRODUCTION

The U.S. Office of Special Counsel (OSC) received complaints in November and December 2017 alleging that Counselor to the President Kellyanne Conway violated the Hatch Act by engaging in political activity while participating in official interviews with Fox News's *Fox & Friends* and CNN's *New Day*. Specifically, the complaints alleged that during these interviews—which Ms. Conway conducted in her official capacity—she improperly advocated for the defeat of Democrat Doug Jones or expressed support for Republican Roy Moore, both of whom were candidates in the December 2017 Alabama special election for U.S. Senate. OSC consolidated the complaints, opened OSC File No. HA-18-0966, and investigated the allegations. This report contains the investigative findings in this matter. In summary, OSC finds that Ms. Conway violated the Hatch Act on two separate occasions and refers the violations to the President for the imposition of appropriate discipline.

II. FACTUAL FINDINGS

Ms. Conway is a commissioned officer in the White House Office serving as Counselor to the President. She has held this position since January 20, 2017.

A. **On November 20, 2017, Ms. Conway appeared in her official capacity on Fox News's *Fox & Friends* and discussed why voters should not support Democrat Doug Jones in the Alabama special election for U.S. Senate.**

On November 19, 2017, *Fox & Friends* requested an interview of Ms. Conway to discuss four topics: tax reform, media coverage of the President's accomplishments, comments by a college basketball player's father, and statements by former Presidential candidate Hillary Clinton. Later that day, the White House Communications Office prepared and provided to Ms. Conway a written official communications briefing. The document included, among other things, talking points about Roy Moore, Al Franken, and sexual misconduct. Specifically, the talking points on Roy Moore were: (1) "Let the people of Alabama decide. I know the people of Alabama they are great - and will do the right thing;" (2) "The President believes these allegations are troubling and if these allegations are true, Judge Moore should step aside;" and (3) "The people of the state of Alabama will make this decision." The communications briefing did not include any reference to Moore's opponent, Doug Jones.

The following morning, *Fox & Friends* remotely interviewed Ms. Conway for approximately 11 minutes.¹ During the interview, Ms. Conway stood on the White House grounds, and the White House was visible in the background. Host Steve Doocy introduced Ms. Conway by stating, "[l]et's talk to Kellyanne Conway. She's Counselor to the President of the United States." The chyron at the bottom of the interview periodically identified Ms. Conway as "Counselor to President Trump."

¹ Video of the November 20, 2017, *Fox & Friends* interview may be found at the following link: <http://insider.foxnews.com/2017/11/20/kellyanne-conway-roy-moore-vote-doug-jones-alabama-vote-against-tax-cuts>.

The interview began with a conversation on tax reform. Ms. Conway discussed, among other things, the President's four core principles for tax cuts and tax relief. When discussing the Administration's tax reform efforts, Mr. Doocy remarked that "[p]artisan politics is getting in the way, and Democrats do not want to give the President a win." In response, Ms. Conway argued that the Administration's tax plan was "a win for the American people," contended that Democrats in opposition were "in big trouble," and then volunteered a comment about Doug Jones and the Alabama special election:

And Doug Jones in Alabama. Folks don't be fooled. He'll be a vote against tax cuts. He's weak on crime, weak on borders. He's strong on raising your taxes. He's terrible for property owners And Doug Jones is a doctrinaire liberal, which is why he's not saying anything and why the media are trying to boost him.

As Ms. Conway was speaking, host Brian Kilmeade asked several times, "[s]o vote Roy Moore?" Ms. Conway responded saying, "I'm telling you that we want the votes in-- in-- in the Senate to get this tax-- this tax bill through Let me tell you something this guy Doug Jones is a doctrinaire liberal." The *Fox & Friends* hosts then asked about the Republican organizations and individuals withdrawing support for Roy Moore. Ms. Conway replied, "[r]ight, and, you know what-- the-- I just want everybody to know Doug Jones, nobody ever says his name and they pretend that he's some kind of conservative Democrat in Alabama and he's not." After a final question about the President's support of Roy Moore, the interview returned to tax reform and other issues.

B. On December 6, 2017, Ms. Conway appeared in her official capacity on CNN's *New Day* and discussed why voters should support Republican Roy Moore, and not support Democrat Doug Jones, in the Alabama special election for U.S. Senate.

On December 5, 2017, *New Day* requested an interview of Ms. Conway to discuss the following topics: tax reform, the Special Counsel investigation, the President's and the Republican National Committee's support for Roy Moore, and a potential government shutdown. Later that day, the White House Communications Office prepared and provided to Ms. Conway a written official communications briefing. The document included a talking point about a telephone conversation between the President and Roy Moore, "during which they discussed the state of the Alabama Senate race and the President endorsed Judge Moore's campaign."

The following day, *New Day* remotely interviewed Ms. Conway for approximately 20 minutes.² During the interview, Ms. Conway stood on the White House grounds, and the White House was visible in the background. Host Christopher Cuomo introduced Ms. Conway by stating, "[t]he White House is defending President Trump's endorsement of controversial Senate candidate Roy Moore Joining us now with her take on that and other news items, Counselor

² Video of the December 6, 2017, *New Day* interview may be found at the following link: <https://www.youtube.com/watch?v=DvXBQZqhTaU>.

to President Trump Kellyanne Conway.” The chyron at the bottom of the interview periodically identified Ms. Conway as “Counselor to President Trump.”

Mr. Cuomo first asked Ms. Conway about the President’s endorsement of Roy Moore. In response, Ms. Conway discussed the President’s initial endorsement of former candidate Luther Strange and then stated:

When the President endorsed Roy Moore -- when he started to talk about Doug Jones, the opponent here which you still don’t want to talk about but the President does, Roy Moore took a lead in the polls again. Why is that? Because the President, himself, came out and said he doesn’t want a liberal in the Senate. He doesn’t want a liberal Democrat in the Senate. He wants a reliable vote for taxes, for life--

Ms. Conway then introduced into the discussion Al Franken’s sexual misconduct and the hypocrisy that she sees among commentators and indicated that the people of each state should decide. The following exchange occurred:

CUOMO: If you want to leave it up to the voters of Alabama, then stay out of it. You don’t vote in Alabama.

CONWAY: Oh, oh, OK, and, and does that mean that Chuck Schumer and Nancy Pelosi don’t want Doug Jones to win? The President has been so explicitly clear on this so let me repeat it again for everyone who wants this to be as it’s not and everyone who’s really disappointed that they couldn’t tilt this race the other way by having people living in Alabama instead of covering what’s going on in the rest of the country. Do you know everything that’s going on in this country? The historic tax cuts for individuals and businesses, but we have people planted in Alabama on one single Senate race. You’re telling the President of the United States not to get involved in a race and the media--

Ms. Conway followed these remarks by stating, “[t]he President has said he wants a vote. He’s also said he doesn’t want a liberal Democrat in the Senate. Nobody was even talking about Doug Jones until the President started talking about him.”

As the interview continued, Ms. Conway repeated the President’s position on the Alabama special election. For instance, Ms. Conway stated that “the only endorsement that matters in this race is President Trump’s” And when referring to the President’s position, she stated that Doug Jones will be a reliable vote “for tax hikes,” “against border security,” “against national security,” “against the Second Amendment,” and “against life.” Further, she stated that Doug Jones is “out of step for Alabama voters, according to the President” and “a liberal Democrat, the President has said ... and he doesn’t want a liberal Democrat representing Alabama in the United States Senate.” The conversation transitioned into the President’s relationship with Mitt Romney and then returned to the Alabama special election. Ms. Conway

again reiterated that the President “is against Doug Jones,” “[d]oes not want a liberal Democrat to represent Alabama,” and “has said that he wants Roy Moore in the United States Senate.”

Mr. Cuomo then asked Ms. Conway, “[a]nd you feel good with that? You feel good with Roy Moore as a reflection of your party?” After Ms. Conway responded that her “feelings don’t matter,” Mr. Cuomo said “[o]h yes they do. You are Counselor to the President of the United States.” Ms. Conway then remarked “[a]nytime I express a feeling about a candidate, people who want to make themselves relevant get air time and Twitter time, so I won’t go there.” Speaking over Ms. Conway’s statement, Mr. Cuomo stated that she has “got to be careful about the Hatch Act.” Ms. Conway continued, stating: “They’re going to have to find something ... relevant and important to do today to make themselves feel better.” Mr. Cuomo then stated, “[y]ou have to be careful about observing the rules of ethics there” And Ms. Conway said, “[l]et me tell you what I feel good about That Donald Trump’s the President of the United States. That Mike Pence is the Vice President of the United States.”

The interview returned to a discussion on tax reform and transitioned to the President’s relationships with both Mitt Romney and Steve Bannon. After discussing Steve Bannon’s initial endorsement of Roy Moore, Ms. Conway said the following:

[T]he only endorsement that’s mattered in the Alabama race ... is the President’s because after he came out against Doug Jones-- and none of you seem to want to say those nine letters, Doug Jones, that God forbid people find out who he is and who he would be in the Senate, so the President had to go out and do it for you. Thank you, Mr. President

Mr. Cuomo and Ms. Conway then reviewed various actions taken by the Democratic and Republican parties in 2017. Ms. Conway also discussed President Trump’s position on moving the U.S. Embassy in Israel from Tel Aviv to Jerusalem before concluding the interview.

C. Ms. Conway has significant knowledge of the Hatch Act.

The Office of White House Counsel provided Hatch Act guidance to Ms. Conway in a formal ethics training session, during individual conversations, and in multiple written communications. More specifically, on January 24, 2017, Ms. Conway attended a senior staff ethics training led by White House Counsel Donald McGahn and Deputy Counsel to the President Stefan Passantino. The training included a discussion of the Hatch Act’s definition of political activity as “[a]ny activity directed toward the success or failure or [sic] a political party, candidate for partisan political office, or partisan political organization.”

Subsequently, on March 1, 2017, Mr. Passantino met individually with Ms. Conway to provide specialized Hatch Act training and review a PowerPoint presentation about the Hatch Act provided by OSC earlier in February 2017. One of the topics discussed was the Hatch Act’s prohibition against using one’s official authority or influence for the purpose of interfering with or affecting the result of an election.

On April 20, 2017, the Office of White House Counsel sent by email to Ms. Conway and other White House Office employees a memorandum entitled “Political Activities and Interactions with Partisan Political Organizations,” which discussed the Hatch Act and identified the use of official authority prohibition as a “certain important restriction[.]” The next day, Mr. Passantino and Senior Associate Counsel to the President Scott Gast met individually with Ms. Conway to provide specialized Hatch Act training and again reviewed the above-referenced PowerPoint presentation provided by OSC.

On June 28, 2017, Ms. Conway received a copy of the White House Staff Manual, which included a section entitled “Political Activities” that discussed the Hatch Act. Also, the Office of White House Counsel often provided Hatch Act guidance to Ms. Conway when she received requests to appear at political events. This guidance again warned against the use of one’s official title or position when participating in political events.

Then, on November 20, 2017, after the *Fox & Friends* interview, the Office of White House Counsel contacted Ms. Conway due to the Hatch Act concerns raised by her interview and again provided her with Hatch Act guidance. And lastly, on December 4, 2017, the Office of White House Counsel sent by email to Ms. Conway and other White House Office employees a Hatch Act reminder regarding the “Use of Official Resources and Official Social Media Accounts,” which included the following information about the Hatch Act’s use of official authority prohibition:

You may not use your official position to affect the result of an election. You may not, for example, use your official title when participating in any political activities, nor may you use your official authority to encourage or coerce anyone (including subordinates) to engage in or refrain from engaging in political activity. This includes through use of official social media accounts. [emphasis in original]

D. Ms. Conway had an opportunity to respond to the Hatch Act allegations during OSC’s investigation.

On January 25, 2018, OSC propounded interrogatories to Ms. Conway and requested her response by February 1, 2018. Having received no response, OSC emailed Mr. Passantino on February 7, 2018, stating that it would assume Ms. Conway did not intend to respond if it received no communication by February 12, 2018. On February 12, 2018, Mr. Passantino confirmed that Ms. Conway intended to respond and would do so in the “near future.” OSC granted Ms. Conway an extension until February 16, 2018. As of the date of this report, OSC has not received Ms. Conway’s response. In addition, OSC provided Ms. Conway an opportunity to respond to the completed report, but has received no such response to date.

Notwithstanding Ms. Conway’s silence, in a response to OSC’s request for information, the Office of White House Counsel provided brief explanations for Ms. Conway’s statements during the interviews on *Fox & Friends* and *New Day*. Specifically, it contended that Ms. Conway’s words “must be viewed through the prism of one whose job function was to provide

commentary concerning the President's newsworthy reasoning for his position with respect to a nominee within his party, as well as the impact of the special election on his agenda." With respect to the *Fox & Friends* interview, the Office of White House Counsel asserted that Ms. Conway "intended these remarks to serve as policy commentary in the context of a broader discussion of the prospects of the President's agenda in Congress, not as advocacy for or against a candidate." And it stated that during the *New Day* interview, "Ms. Conway sought to articulate, without engaging in any advocacy, why the President's posture with respect to [Roy Moore] had changed."

III. LEGAL ANALYSIS

A. Ms. Conway is subject to the Hatch Act.

The Hatch Act restricts the political activity of "any individual, other than the President and the Vice President, employed or holding office in ... an Executive agency other than the Government Accountability Office." 5 U.S.C. § 7322(1). The White House Office is a component of the Executive Office of the President, which is considered an Executive agency for purposes of the Hatch Act.³ Therefore, Ms. Conway, a presidential appointee employed by the White House Office, is subject to the Hatch Act.

B. Ms. Conway violated the Hatch Act's prohibition against using one's official authority or influence for the purpose of interfering with or affecting the result of an election.

The Hatch Act prohibits federal employees from using their official authority or influence for the purpose of interfering with or affecting the result of an election. 5 U.S.C. § 7323(a)(1). The attendant Hatch Act regulation gives examples of the type of activity this prohibition encompasses. For example, it is a prohibited use of official authority for employees to use their official title or position while participating in political activity. *See* 5 C.F.R. § 734.302(b)(1). Political activity is defined as activity directed at the success or failure of a political party, partisan political group, or candidate for partisan political office. 5 C.F.R. § 734.101. Thus, federal employees in their official capacity are prohibited from, among other things, promoting the election or defeat of candidates for partisan political office.

1. Ms. Conway violated the Hatch Act during her November 20, 2017, interview on Fox News's *Fox & Friends*.

The White House Communications Office arranged Ms. Conway's *Fox & Friends* interview and provided her with a written communications briefing containing official talking points. When *Fox & Friends* interviewed Ms. Conway, she was introduced as Counselor to the President, the White House appeared in the background, the chyron at the bottom of the

³ *See* 19 U.S. Op. Off. Legal Counsel 103 (May 5, 1995), 1995 WL 1767065 (concluding that for Hatch Act purposes, the White House Office is an Executive agency); 27 U.S. Op. Off. Legal Counsel 118 (May 23, 2003), 2003 WL 25728359 (reaffirming conclusion that the Hatch Act applies to employees of the White House Office).

interview periodically identified Ms. Conway as “Counselor to President Trump,” and she spoke for the first two and half minutes about tax reform and the Administration’s efforts on that issue. Given the official arrangement of the interview, the use of her official title, the discussion of official topics, and her standing in front of the White House during the interview, it is clear Ms. Conway gave the interview in her official capacity as Counselor to the President.

Prior to the *Fox & Friends* interview, Ms. Conway received regular and repeated Hatch Act training and guidance. As such, it is inexplicable why, when asked a question about tax reform and Democratic opposition, Ms. Conway chose to answer as follows:

And Doug Jones in Alabama. Folks don’t be fooled. He’ll be a vote against tax cuts. He’s weak on crime, weak on borders. He’s strong on raising your taxes. He’s terrible for property owners And Doug Jones is a doctrinaire liberal, which is why he’s not saying anything and why the media are trying to boost him.

Afterward when one of the *Fox & Friends* host asked, “[s]o vote Roy Moore?,” Ms. Conway responded, “I’m telling you that we want the votes in -- in -- in the Senate to get this tax bill through Let me tell you something this guy Doug Jones is a doctrinaire liberal.”

Ms. Conway’s introduction of Doug Jones into the interview was unprompted, unresponsive to the question asked by the *Fox & Friends* host, and surprising given that she knew the four identified interview topics did not include Doug Jones, Roy Moore, or the Alabama special election. Her intentional partisan jabs against Doug Jones were made in her official capacity and meant to persuade voters not to support him in the Alabama special election. By telling voters not to “be fooled” and contending that Doug Jones would be “terrible for property owners,” Ms. Conway advocated for the failure of his candidacy. She also implied that voters should support Roy Moore, so the President could get the votes in the Senate needed to pass tax reform. Her advocacy against one candidate and implied endorsement of another candidate constituted political activity under the Hatch Act. Because Ms. Conway engaged in political activity while acting in her official capacity as Counselor to the President, she violated the Hatch Act’s prohibition against using one’s official authority or influence for the purpose of interfering with or affecting the result of an election.

2. Ms. Conway violated the Hatch Act during her December 6, 2017, interview on CNN’s *New Day*.

As with the *Fox & Friends* interview, the White House Communications Office arranged Ms. Conway’s *New Day* interview and provided her with a written communications briefing containing official talking points. At the beginning of the interview, Ms. Conway was introduced as “Counselor to President Trump, Kellyanne Conway,” and the chyron at the bottom of the interview periodically identified her with this title. Throughout the interview, Ms. Conway stood on the White House grounds, and the White House appeared in the background. Given the official arrangement of the interview, the use of her official title, the discussion of official topics, and her standing in front of the White House during the interview, Ms. Conway gave the *New Day* interview in her official capacity as Counselor to the President.

Unlike the previous interview on *Fox & Friends*, *New Day* requested that Ms. Conway discuss Roy Moore, and the official communications briefing she received included a talking point that included the President's endorsement of Roy Moore. The communications briefing, however, did not mention Doug Jones or the reasons why voters should not support him. Nonetheless, during the *New Day* interview Ms. Conway repeatedly described Doug Jones as a liberal Democrat and gave reasons why voters should not support him in the Alabama special election.

In contrast with the previous interview on *Fox & Friends*, however, Ms. Conway attributed many of her comments on *New Day* about Doug Jones and Roy Moore to the President. For instance, while discussing why Roy Moore "took a lead in the polls," Ms. Conway stated: "Why is that? Because the President, himself, came out and said he doesn't want a liberal in the Senate. He doesn't want a liberal Democrat in the Senate. He wants a reliable vote for taxes, for life" Ms. Conway repeated the President's position later in the interview by stating that Doug Jones will be a reliable vote "for tax hikes," "against border security," "against national security," "against the Second Amendment," "against life," and that Doug Jones "is out of step for Alabama voters, according to the President." Later in the interview she reiterated that Doug Jones is "a liberal Democrat... and [the President] doesn't want a liberal Democrat representing Alabama in the United States Senate."

During the investigation of this matter, OSC learned that Ms. Conway received Hatch Act guidance on two occasions between the *Fox & Friends* and *New Day* interviews. First, the Office of White House Counsel met with Ms. Conway after her *Fox & Friends* interview on November 20, 2017, to discuss specific concerns raised by the interview and provided Hatch Act guidance. Second, on December 4, 2017, the Office of White House Counsel sent by email to Ms. Conway and other White House Office employees a Hatch Act reminder, which expressly warned against the use of one's official position to interfere with an election and the use of one's official title while participating in any political activity.

Although Ms. Conway's statements about the candidates in the Alabama special election during her *New Day* interview were portrayed as the President's position, she was still providing voters with reasons to vote for Roy Moore and against Doug Jones. Indeed, framing her responses to reflect the President's position arguably served as an additional and more persuasive reason for voters to support Roy Moore and not Doug Jones. Therefore, her statements advocating for the defeat of Doug Jones and the election of Roy Moore constituted political activity under the Hatch Act. Because Ms. Conway engaged in political activity while acting in her official capacity as Counselor to the President, she violated the Hatch Act's prohibition against using one's official authority or influence for the purpose of interfering with or affecting the result of an election.

* * *

As previously mentioned, the Office of White House Counsel—in a response to OSC's request for information—provided brief explanations for Ms. Conway's statements during the

Fox & Friends and *New Day* interviews. It took the position that, during these interviews, Ms. Conway provided policy commentary about the “prospects of the President’s agenda in Congress” and “sought to articulate, without engaging in any advocacy, why the President’s posture with respect to [Roy Moore] had changed.” This position, however, lacks merit. Indeed, adopting it would render meaningless the Hatch Act’s prohibition against using one’s official authority or influence for the purpose of interfering with or affecting the result of an election. Federal employees in their official capacity would be free to express electoral preferences and claim immunity from the Hatch Act by hiding behind the President’s statements about candidates and declaring they were merely carrying out their official duties in support of the Administration’s agenda. In any event, Ms. Conway’s statements, made in her official capacity, went beyond providing “commentary” on the Administration’s policies, and thus constituted political activity.

While the President is exempt from the Hatch Act, his exemption does not extend to any other employee, including those employed in the White House Office. OSC understands that Ms. Conway’s job duties may include publicly reinforcing the Administration’s positions on a host of policy issues. And the Hatch Act does not prohibit Ms. Conway from doing so, provided she carries out her job duties in a manner that complies with the law. Here, after receiving substantial Hatch Act guidance, Ms. Conway, in her official capacity, attempted to influence the Alabama special election by advocating for the success and failure of candidates in that race. In doing so, Ms. Conway violated the Hatch Act on two separate occasions.

IV. CONCLUSION

While the Hatch Act allows federal employees to express their views about candidates and political issues as private citizens, it restricts employees from using their official government positions for partisan political purposes, including by trying to influence partisan elections. In passing this law, Congress intended to promote public confidence in the Executive branch by ensuring the federal government is working for all Americans without regard to their political views. Ms. Conway’s statements during the *Fox & Friends* and *New Day* interviews impermissibly mixed official government business with political views about candidates in the Alabama special election for U.S. Senate.

The U.S. Constitution confers on the President authority to appoint senior officers of the United States, such as Ms. Conway. Considering the President’s constitutional authority, the proper course of action, in the case of violations of the Hatch Act by such officers, is to refer the violations to the President. Pursuant to 5 U.S.C. § 1215(b), OSC offered Ms. Conway an opportunity to respond to this report but did not receive a response. OSC hereby submits this Report of Prohibited Political Activity to the President for appropriate disciplinary action. *See* 5 U.S.C. § 1215(b).



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, NW, Suite 218
Washington, DC 20036-4505
(202) 804-7000

April 19, 2018

The Honorable Thomas Carper
United States Senate
513 Hart Senate Office Building
Washington, DC 20510-0803

Re: (b)(6); (b)(7)(C) Hatch Act Investigation

Dear Senator Carper:

The U.S. Office of Special Counsel (OSC) has completed its investigation into information you provided concerning potential Hatch Act violations by (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) You asked OSC to determine whether (b)(6); (b)(7)(C) used (b)(6); (b)(7)(C) official authority or influence to affect the result of an election when (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) After careful review, we have concluded that (b)(6); (b)(7)(C) did not violate the Hatch Act, and we are closing our file in this matter.

The Hatch Act restricts the political activity of “any individual, other than the President and the Vice President, employed or holding office in . . . an Executive agency other than the Government Accountability Office.” 5 U.S.C. § 7322(1). The (b)(6); (b)(7)(C) is a component of the Executive Office of the President, which is considered an Executive agency for Hatch Act purposes. Therefore, (b)(6); (b)(7)(C) by (b)(6); (b)(7)(C) is subject to the Hatch Act. Among other things, the Hatch Act prohibits covered employees from using their official authority or influence for the purpose of interfering with or affecting the result of an election. § 7323(a)(1). The attendant Hatch Act regulation explains that an officer or employee can violate this prohibition by using his official title while engaging in political activity. See 5 C.F.R. § 734.302(b)(1). The regulation further defines “political activity” as activity directed at the success or failure of a political party, candidate for partisan political office, or partisan political group. § 734.101.

According to the information you provided, on February 27, 2018, President Donald

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Under these circumstances,

(b)(6); (b)(7)(C) did not violate the Hatch Act.

U.S. Office of Special Counsel
The Honorable Thomas Carper
Page 2

In light of these findings, we are closing our file in this matter. Please contact me at (202) 804-7084 if you have any additional questions.

Sincerely,

Ana Galindo-Marrone
Chief, Hatch Act Unit



U.S. OFFICE OF SPECIAL COUNSEL

1730 M Street, NW, Suite 218

Washington, DC 20036-4505

(202) 804-7000

April 19, 2018

(b)(6); (b)(7)(C)

Re: OSC File No. HA-18-2727

Dear (b)(6); (b)(7)(C):

The U.S. Office of Special Counsel (OSC) has completed its investigation into your allegations that (b)(6); (b)(7)(C) violated the Hatch Act. You allege that (b)(6); (b)(7)(C) used (b)(6); (b)(7)(C) official authority or influence to affect the result of an election on two occasions. After careful review, we have concluded that (b)(6); (b)(7)(C) did not violate the Hatch Act, and we are closing our file in this matter.

The Hatch Act restricts the political activity of “any individual, other than the President and the Vice President, employed or holding office in . . . an Executive agency other than the Government Accountability Office.” 5 U.S.C. § 7322(1). (b)(6); (b)(7)(C) is a component of the Executive Office of the President (EOP), which is considered an Executive agency for Hatch Act purposes. Therefore, (b)(6); (b)(7)(C) a presidential appointee employed by (b)(6); (b)(7)(C) is subject to the Hatch Act. Among other things, the Hatch Act prohibits covered employees from using their official authority or influence for the purpose of interfering with or affecting the result of an election. § 7323(a)(1). The attendant Hatch Act regulation explains that an officer or employee can violate this prohibition by using his official title while engaging in political activity or by using his authority to coerce another person to participate in political activity. See 5 C.F.R. § 734.302(b)(1)-(2). The regulation further defines “political activity” as activity directed at the success or failure of a political party, candidate for partisan political office, or partisan political group. § 734.101.

You first allege (b)(6); (b)(7)(C) violated the Hatch Act on (b)(6); (b)(7)(C) when

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C) During OSC’s investigation, we learned that (b)(6); (b)(7)(C) did not authorize the campaign (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) And as noted in your complaint to OSC, the campaign (b)(6); (b)(7)(C) from the (b)(6); (b)(7)(C) Under these circumstances, (b)(6); (b)(7)(C) did not violate the Hatch Act.

U.S. Office of Special Counsel

(b)(6); (b)(7)(C)

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You further allege (b)(6); (b)(7)(C) violated the Hatch Act on (b)(6); (b)(7)(C) 2018, during (b)(6); (b)(7)(C). According to (b)(6); (b)(7)(C) by (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) Therefore, (b)(6); (b)(6); (b)(7)(C) did not violate the Hatch Act by (b)(6); (b)(7)(C) (b)(6); (b)(7)(C)

In light of these findings, we are closing our file in this matter. Please contact me at (202) 804-7084 if you have any additional questions.

Sincerely,

Ana Galindo-Marrone
Chief, Hatch Act Unit

¹ As you are aware, certain EOP employees are permitted to engage in political activity while on duty or in the federal workplace under certain circumstances. See 5 U.S.C. § 7324(b)(2)(B)(i). (b)(6); (b)(7)(C) (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)



U.S. OFFICE OF SPECIAL COUNSEL
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(202) 804-7000

April 19, 2018

(b)(6); (b)(7)(C)

VIA EMAIL (*Stefan.C.Passantino@who.eop.gov*)

Re: OSC File No. HA-18-2727

Dear (b)(6); (b)(7)(C):

The U.S. Office of Special Counsel (OSC) has completed its investigation into allegations that, on two occasions, you used your official authority or influence to affect the result of an election in violation of the Hatch Act. After careful review, we have concluded that you did not violate the Hatch Act, and we are closing our file in this matter.

The Hatch Act restricts the political activity of “any individual, other than the President and the Vice President, employed or holding office in . . . an Executive agency other than the Government Accountability Office.” 5 U.S.C. § 7322(1). (b)(6); (b)(7)(C) is a component of the Executive Office of the President (EOP), which is considered an Executive agency for Hatch Act purposes. Therefore, as a (b)(6); (b)(7)(C) employed by the (b)(6); (b)(7)(C) you are subject to the Hatch Act. Among other things, the Hatch Act prohibits covered employees from using their official authority or influence for the purpose of interfering with or affecting the result of an election. § 7323(a)(1). The attendant Hatch Act regulation explains that an officer or employee can violate this prohibition by using his official title while engaging in political activity or by using his authority to coerce another person to participate in political activity. See 5 C.F.R. § 734.302(b)(1)-(2). The regulation further defines “political activity” as activity directed at the success or failure of a political party, candidate for partisan political office, or partisan political group. § 734.101.

The first occasion on which you allegedly violated the Hatch Act was on (b)(6);

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

We understand that

you did not authorize

(b)(6); (b)(7)(C)

We also

note that

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Under these circumstances, you did not violate the

Hatch Act.

U.S. Office of Special Counsel

(b)(6); (b)(7)(C)

OBJ:2

The second alleged transgression occurred on (b)(6); (b)(7)(C) during a

(b)(6); (b)(7)(C)

According to

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

According to the information

we received,

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6);

you did not violate the Hatch Act by

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

In light of these findings, we are closing our file in this matter. Please contact me at (202) 804-7084 if you have any additional questions.

Sincerely,

Ana Galindo-Marrone
Chief, Hatch Act Unit

¹ Certain EOP employees are permitted to engage in political activity while on duty or in the federal workplace under certain circumstances. *See* 5 U.S.C. § 7324(b)(2)(B)(i).

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

Appendix

Investigation Required Under 5 U.S.C. § 1213(c)

GENERAL AUTHORITY AND REQUIREMENTS

The U.S. Office of Special Counsel (OSC) receives disclosures of information from federal employees, former employees, and applicants who reasonably believe the information evidences:

- a violation of any law, rule, or regulation;
- gross mismanagement;
- a gross waste of funds;
- an abuse of authority; or
- a substantial and specific danger to public health or safety.

See 5 U.S.C. § 1213(a). If the Special Counsel determines by a substantial likelihood that the information evidences conduct within a federal agency in one of these categories, she must transmit the information to the head of the appropriate agency. *See* 5 U.S.C. § 1213(c)(1).

The agency, in turn, is required to investigate the information and any related matters transmitted by the Special Counsel. 5 U.S.C. § 1213(c)(1)(A). Where the whistleblower has consented to OSC's release of their name, OSC requires that the agency interview the whistleblower as part of its investigation. The agency head must submit a written report to the Special Counsel within sixty days, unless the Special Counsel agrees in writing to a longer period of time. 5 U.S.C. §§ 1213(c)(1)(B), (c)(1).

AGENCY REPORT

The report must be signed by the head of the agency and include the elements outlined in § 1213(d). The report must also provide findings on the issues submitted for investigation. *See* 5 U.S.C. § 1213(c)(1)(B). The agency head may delegate their authority to review and sign the report, but the delegation must be specifically stated and must also grant the authority to take any necessary action resulting from the investigation.

Please do not include personally identifiable information in the report. OSC does not consider individuals' names or titles to be personally identifiable information for purposes of the report. Please do include information about actual or projected financial savings as a consequence of the investigation, as well as any policy changes related to the financial savings.

SUBSEQUENT ACTION BY THE SPECIAL COUNSEL

Upon receipt, the Special Counsel must review the report, determine whether it contains all of the information delineated in § 1213(d), and determine whether the agency head's findings appear reasonable. 5 U.S.C. § 1213(e)(2). In her reasonableness determination, she will consider factors such as the report's exhaustiveness, internal consistency, and credibility. She will then send to the appropriate congressional oversight committees and the President:

- the agency's report;
- the whistleblower's comments, if any, generally after the whistleblower is afforded an opportunity to read the report; and
- her own comments or recommendations, including her determination on whether the findings appear reasonable.

5 U.S.C. §§ 1213(e)(1), (e)(3). In general, OSC will make publicly available the report, the whistleblower's comments, and the Special Counsel's comments or recommendations. *See* 5 U.S.C. § 1219(a). If the agency fails to submit the report in the afforded time period, the Special Counsel must inform the congressional oversight committees and the President that the agency head failed to file the report as required by law. 5 U.S.C. § 1213(e)(4).

EVIDENCE OF CRIMINAL CONDUCT

If the agency discovers evidence of a criminal violation during the course of its investigation and refers the evidence to the Attorney General, the agency must notify the Office of Personnel Management and the Office of Management and Budget. 5 U.S.C. § 1213(f). In such cases, the agency must still submit its report to OSC, but OSC must not share the report with the whistleblower or make it publicly available. *See* 5 U.S.C. §§ 1213(f), 1219(a)(1).

RETALIATION AGAINST WHISTLEBLOWERS

OSC is authorized to investigate and prosecute federal employees who retaliate against others for whistleblowing or engaging in protected activity. *See* 5 U.S.C. §§ 1214(a)(1)(A), 1215(a)(1), 2302(b)(8), 2302(b)(9). The Special Counsel strongly recommends the agency take all appropriate measures to protect individuals from retaliation and other prohibited personnel practices.